Although drug courts are local programs, many were established using federal grant dollars from the U.S. Department of Justice. As these federal grants run their course and overall federal funding for drug courts declines, drug court programs are increasingly relying on state funding for long-term sustainability. Based on prior research and interviews with state drug court directors, this article delineates the three basic models that have emerged for funding and management of these programs at the state level. There is no one best model—each has its strengths and weaknesses. States contemplating a centralization of their drug court activity are urged to carefully consider the executive, judicial, and collaborative models in light of their respective state bureaucratic structures. Whatever decision is made, it must reflect input from the important state-level stakeholders.

*Keywords*: drug courts; administration; judiciary, executive branches

One of the largest problems for the U.S. criminal justice system in the past 30 years has been criminal offenders who frequently recidivate and seem unaffected by justice system sanctions. Repeat offenders represent a constant source of difficulty for law enforcement, the courts, and correctional institutions (Walker, 2001). Since 1989, drug courts have emerged as a means for dealing with this difficult population (Huddleston, Freeman-Wilson, & Boone, 2004; Marlowe, 2004). Judges and other criminal justice professionals originally designed drug courts to deal with low- to mid-level repeat offenders with co-occurring substance abuse disorders. Insofar as these offenders’ recidivism stems directly from their substance abuse problems, successful drug and alcohol treatment could prevent future offenses (National Association of Drug Court Professionals, 1997). Conceptually, the drug court model is simple: Use appropriate tools to diagnose addiction severity, link offenders to appropriate treatment services, hold offenders accountable, and manage their behavior both within and outside the treatment setting through the systematic use of sanctions and incentives enforced by regular judicial status hearings.

The drug court model was originally formulated at the local court level, and it is there that it is best defined. Through national outreach, research, and training organizations, local programs have a great deal of technical and programmatic information available on which to rely in times of change or crisis. As drug courts become institutionalized, however, significant concerns remain about how best to administer drug courts at the state level. The executive branch can lay claim to drug court administration through treatment, law enforcement, and probation/parole. On the other hand, the judicial branch has more obvious jurisdiction over drug court through the judicial adjudicative and administrative process. As federal grants supporting local court programs expire and issues of funding and administration are increasingly being absorbed by states, this problem becomes ever more salient. And as governmental branches at the state level become more contentious over the issue, it is possible that local intervention will suffer.

To conceptualize the emerging problem of state drug court administration, this article will explore the modalities commonly used for managing drug court programs and attempt to answer several related questions. What are the mechanisms that states use to ensure effective delivery of public services (e.g., treatment) to clients? What are the strengths and weaknesses of each of these bureaucratic mechanisms? What factors influence funding stability? Finally, what recommendations can be drawn to accommodate diverse interests across states? This is not meant to be an exhaustive list of possible complications arising from interagency collaboration. Indeed, some issues raised herein may prove intractable even to the best intentioned, while other authors may wish to engage some issues
for full philosophical satisfaction. Drug courts, however, are a practical response to a real problem—an article addressing their implementation must reflect the same. Our purpose here is to provide an outline of those pitfalls that are endemic to those wishing to establish or shift comprehensive statewide management of drug courts and some of the ways that they can be avoided, confronted, or defeated.

To accomplish these tasks, we reviewed relevant literature and operational examples and conducted interviews with a sample of state-level drug court program directors. Guided by these sources, we discovered that the issues relevant to a discussion of state drug court administration include sustainability, accountability, and program legitimacy. Further, legal and political challenges to drug courts at a state level often emanate from the lack of judicial authority, executive branch oversight of court-funded treatment, and inadequate evaluation and measurement of drug court activities. It is through these lenses that we will explore state drug court administration, funding, and legitimacy.

**An Introduction to Drug Courts**

Begun in Miami-Dade County, Florida, as a response to the rising crack epidemic of the 1980s, the resultant growth of drug courts is perhaps unprecedented for a modern court innovation. In less than two decades, the number of drug courts has swollen to more than 1,600 nationally (Huddleston, Freeman-Wilson, Marlowe, & Roussell, 2005). Since most of this growth is locally driven, it is clear that drug courts are being implemented to solve the distinctive problems of local jurisdictions. Drug court programs provide treatment services and stringent supervision to substance abusing and addicted offenders in the community. Drug court goals focus on reductions in participant substance abuse and criminality. To accomplish this, drug courts rely on an integrated regimen of frequent drug testing, intensive supervision, judicial oversight, drug counseling and treatment, social and educational opportunities, and the use of sanctions and incentives to encourage prosocial behavior. Ideally, offenders are screened using criteria that focus on both risk and need (Heck, 2006). Risk factors include such things as previous criminal history and personal stability. Violent offenders are often excluded from program participation by policy. Need factors include severity of addiction problems, co-occurring disorders, and failures at prior treatment episodes. Offenders with demonstrated needs are then linked with appropriate services in the community including, but not limited to, alcohol and drug treatment under the supervision of the drug court judge. This is the heart of the drug court model: an interagency, collaborative approach that provides complete assessment and matches locally available resources with demonstrated offender needs.

Research consistently suggests that applications of the drug court model are effective in reaching these goals (see generally Huddleston et al., 2004; for a review of adult drug court research specifically, see Government Accountability Office, 2005). However, it is becoming increasingly clear that the extent to which these programs are successful depends on several key factors. To maintain consistent results, drug courts must have appropriate allocations of resources, continuity of application, and consistent team participation. Although it remains unclear which of these factors is the most important (Marlowe, Heck, Huddleston, & Casebolt, 2006), there is clear evidence that, when faithfully implemented, the model produces positive results (Berman & Feinblatt, 2005). Drug courts are often measured by their ability to function within the “Ten Key Components” of the drug court model, which lay out the basic definitions of drug court and comprise its defining characteristics (National Association of Drug Court Professionals, 1997). Indeed, significant research in the field of therapeutic court interventions suggests that the integrity of the drug court model is one of the primary predictors of programmatic success (Belenko, 1998, 2001).

Successful as drug court may be with offenders, this collaborative approach has some inherent pitfalls. As a focal point for these interventions, drug court judges both perform and supervise traditionally executive branch functions, including the provision of treatment and community supervision. This new use of the courts has sparked questions about the constitutional role of judges, state funding of drug court programs (including perennial issues of separation of powers), and the scope of both the supervision and authority of drug court judges. Many drug court programs were initially created through federal grants from the Bureau of Justice Assistance, U.S. Department of
Justice. These grants typically cover a 3-year implementation period for drug court programs, and judges are usually given authority to manage these funds. However, as federal grants expire, states become increasingly responsible for the funding and maintenance of their constituent drug court programs. The best way to do this remains in doubt. Many states have had difficulty finding the right mechanism through which to provide comprehensive funding and oversight for local programs that include the executive branch functions as well as judicial (Fox & Wolfe, 2004).

The speed and depth to which state and federal government have “bought into” what is essentially a local concept is striking. Key to drug courts’ success are the collaborations required between disparate community players such as treatment, probation, defense counsel, and prosecution (Goldkamp, White, & Robinson, 2002). What is often overlooked, however, is the degree to which this collaboration must also be reflected at the state administrative level (Fox & Wolfe, 2004). Whichever actor promotes drug court support at the state level must balance funding and administrative concerns involving all three branches of government. Many states struggle especially with the conflict between executive and judicial branch functions.

Legislative branch responsibilities for drug court programs, though not unimportant, are generally limited to enacting legislation and funding programs. The responsibilities of the judicial and executive branches are more complicated. The judicial and executive branches together must address contentious issues such as the funding of treatment and a “home” for the state drug court administrative authority that will provide accountability, credibility, and capable management. Specifically, problems such as judicial management of executive agency dollars, judicial administration of programs, excessive executive authority over judicial matters, and intercourt conflicts of interest have proven to be major issues. Although there is room for different interpretations, state drug court administration tends to fall into one of three categories: the judicial branch model, the executive branch model, and the collaborative model (Fox & Wolfe, 2004). These models are often defined by the enabling legislative appropriation and basic administrative control.

**Defining the Models: Research and Methods**

Fox and Wolfe (2004) developed three distinct categorical models of statewide drug court management: the executive branch model, the judicial branch model, and the collaborative model. Executive models are those that fund and manage their courts solely or largely through executive branch offices (generally the single state agency responsible for handling substance abuse and addiction problems). On the other hand, judicial models funnel authority through the state Administrative Offices of the Courts, also to varying degrees. These two models represent opposite ends of a continuum, with more collaborative approaches composing the middle. Where a state falls on the spectrum depends on the agreed-on balance between judicial and executive branches over the administration of drug courts. Whereas “hard” executive or judicial models are easy to identify, collaborative models are “softer” and appear in a wide array of incarnations.
To better understand these models, we employed semistructured interviews with a number of state drug court administrators. There were some limitations in choosing interviewees. Not every state has a centralized management structure, nor did every state have a single person in charge and available to speak on these matters. Furthermore, whereas a majority of eligible states fell into the category of the judicial model, it was important to have all three models represented. A stratified sample was drawn from those available for inclusion, including, by design, states representative of each of the three drug court administrative modalities. These interviews were conducted by telephone with 11 state drug court program directors selected for their deep knowledge of their respective programs. These program directors are responsible for coordinating the disparate agencies that are involved in the drug court process, as well as interfacing between the local programs and state-level authorities. This puts them in the unique position of straddling the responsibilities between branches, as well as all levels of government, making them invaluable resources for this sort of inquiry.

The interviews comprised six open-ended questions regarding the modalities employed by states for administering drug court funding and programs. Also included were two Likert-type scaled questions regarding perceptions of the stability of state drug court funding specifically, as well as the stability of the overall state budget. Of the states that were surveyed, three used an executive model, six used a judicial model, and two used a collaborative approach. As is appropriate in a stratified sampling approach, this roughly reflects the national divide in drug court administrative structure (see Table 1). It is important to remember that the presence of a centralized management structure indicates a firm state commitment to drug court, which may indicate a difference between the interviewees and other states.

### Table 1

<table>
<thead>
<tr>
<th>State</th>
<th>Model</th>
<th>Drug Court Funding Stability</th>
<th>Overall State Budget Stability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Judicial</td>
<td>Fairly stable</td>
<td>Fairly stable</td>
</tr>
<tr>
<td>California</td>
<td>Collaborative</td>
<td>Fairly stable</td>
<td>Not stable</td>
</tr>
<tr>
<td>Florida</td>
<td>Judicial</td>
<td>Fairly stable</td>
<td>Very stable</td>
</tr>
<tr>
<td>Idaho</td>
<td>Collaborative</td>
<td>Very stable</td>
<td>Very stable</td>
</tr>
<tr>
<td>Illinois</td>
<td>Judicial</td>
<td>Not stable</td>
<td>N/A</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Judicial</td>
<td>Not stable</td>
<td>N/A</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Judicial</td>
<td>Stable</td>
<td>Fairly stable</td>
</tr>
<tr>
<td>Missouri</td>
<td>Executive</td>
<td>Very stable</td>
<td>Not stable</td>
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<tr>
<td>Virginia</td>
<td>Judicial</td>
<td>Stable</td>
<td>Stable</td>
</tr>
<tr>
<td>Washington</td>
<td>Executive</td>
<td>Very stable</td>
<td>Fairly stable</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Executive</td>
<td>Fairly stable</td>
<td>Fairly stable</td>
</tr>
</tbody>
</table>

a. Stability was measured on a sliding scale: not stable, fairly stable, stable, very stable.
b. Interviews were conducted before the fallout associated with Hurricane Katrina.
Note: N/A = not applicable.

Model Strengths and Weaknesses

The administration and funding of drug courts takes various shapes throughout the country. Although we attempt to describe the various permutations of each model, the models themselves are ideal types. As such, specific strengths and weakness of each are reflected to varying degrees among their real-life counterparts. The interviews, as well as the authors’ personal experience, were very helpful in this regard. The interviews revealed that the states’ drug court administrative structures had been in place for different lengths of time and that this was reflected in their respective comfort levels with their chosen model. Several state contacts suggested that state oversight commissions, often a combination of executive, judicial, and even legislative branch partners, provided excellent oversight and
credibility for the state drug court program in its entirety. Further, interviewees, regardless of model, made it clear that judges often felt more secure when supported in administrative function by the state supreme court and Administrative Offices of the Courts, whereas treatment providers felt more secure with executive branch oversight.

**Executive Branch Model**

A number of states that have centralized drug court management and oversight rely on executive branch agencies for drug court management. The greatest strength of this model is the oversight available for treatment and supervision programs, due to the fact that funding is channeled through legislative appropriations directly to the executive branch. Whereas judges usually manage individual drug courts, programs revolve around high levels of treatment, frequent drug and alcohol testing, and supervision received by clients. Most drug court clients receive between 6 and 10 hours a week of counseling and treatment services. Counselors and treatment providers who are licensed by executive branch agencies usually provide these services. This connection provides the executive model drug court managers the ability to monitor the quality of treatment. Tellingly, one of the most common complaints made by local drug court judges is with regard to their ignorance of substance abuse treatment. State directors indicate that the executive branch model therefore reduces concerns about the nature of the treatment provided by drug court programs.

Still, this places executive management in the position of playing decision maker over what is ultimately a court program, thus invoking unease over separation of powers issues. The national Conference of State Court Administrators (COSCA) and Conference of Chief Justices, an organization on record in its support of problem-solving courts (COSCA, 2000), provides a powerful, practical perspective on this issue, suggesting that the separation of powers doctrine is based primarily on functional utility:

> Judicial independence is not an end in itself . . . but rather the means to ensure the primacy of the rule of law by guaranteeing the ability of the courts to protect individual rights, police the exercise of governmental powers and decide individual disputes impartially. Moreover, the doctrine of separation of powers contemplates some sharing of powers among the branches; indeed, the other branches are constitutionally empowered to determine the judicial branch’s structure, jurisdiction and resources. (COSCA, 2001, p. 6)

This must be interpreted cautiously, as COSCA also asserts unequivocally the territory of the judiciary, stating that policy decisions involving the actual administration of justice must be the primary bailiwick of the judicial branch. This is not only a matter of “good governance” but also a strongly constitutional issue, because administration is inherently bound up in the adjudicative role of the courts (COSCA, 2001).

Suggesting that outside regulation and accountability is both inevitable and desirable, COSCA (2001, p. 1) states that “with judicial governance comes the right and interest of the other branches of government and the public to hold the judiciary accountable for effective management of court business.” Although courts do occupy a relatively independent position in American governance, they still must be accountable to the public for their institutional actions. Indeed, the late Chief Justice William H. Rehnquist opined in his 1996 *Year-End Report on the Federal Judiciary*:

> Once again this year—in my eleventh annual report on the state of the judiciary—I am struck by the paradox of judicial independence in the United States: we have as independent a judiciary as I know of in any democracy, and yet the judges are very much dependent on the Legislative and Executive branches for the enactment of laws to enable the judges to do a better job of administering justice. (1996, p. 1)

The judicial branch is a separate, coequal branch of government, which has the constitutionally founded authority to make decisions about the actions of the legislative and executive branches. This authority is carefully guarded and protected against any advances made by agents of the other branches (American Bar Association, 1997). Indeed, the separation of powers doctrine requires that the three branches maintain distinct realms of
authority largely to prevent abuse of power by any one branch. Yet, if this is ultimately a functional directive, as COSCA (2001) suggests, perhaps there is more room for overlap of authority than the separation of powers doctrine implies. This flexibility, however, must end at the point where the actual administration of justice begins (Rehnquist, 1996). Still, from the viewpoint of the most powerful state judicial leaders in the United States (i.e., COSCA and Conference of Chief Justices), executive control of judicial programs can be justified for the greater good under certain circumstances.

Beyond the philosophical, this problem is manifested in practical weaknesses of the executive branch model. Judges sometimes lament a lack of authority and oversight in the operation of their drug courts. Drug courts that have executive branch management and funding are precarious balanced between subjecting themselves to executive authority and maintaining their independence. Thus, as reported by state directors, drug court judges often feel as though they are operating programs on an island without the support of those systems designed to promote appropriate action within courts. In these cases, drug court judges are beholden to executive branch authorities to answer treatment and supervision questions and solve problems that they are often ill equipped to handle.

When executive model administrators grant authority to executive branch agencies to set rules and requirements for drug court program activity, the balance of power is imperiled. Fox and Wolfe (2004, p. 21) suggest that “as states have assumed more financial responsibility for drug courts, they have also begun taking on more policymaking authority.” Thus, drug court programs that receive funding from executive agencies must also subject themselves to policies and rules established by these agencies. In essence, this acceptance of outside authority could go beyond the proscriptions set by COSCA and Rehnquist to actually determine the administration of justice. For many drug court judges, the value of the goals associated with successful treatment of addicted offenders outweighs the possible negative effects of having to follow rules established by the executive branch. Many see this as a mere technicality; others disagree. Should judges be forced to choose?

Were states to create third-party agencies comprising stakeholders from both (or all three) branches, it is possible that weaknesses relating to authority struggles and separations of power might be mitigated, while retaining the general executive model structure. Further, some states have seen the advantages of this sort of collaboration and have shifted varying amounts of their drug court authority to third party agencies. Again, however, a full shift to a collaborative model may not required—the improved judicial voice in executive decision making might mitigate concerns without the loss of the executive power majority and its related strengths.

Judicial Branch Model

Despite their collaborative nature, drug courts revolve around the judge and the courtroom. This links drug courts inextricably to the judicial system and is undoubtedly a major reason that the judicial model predominates across the United States. It therefore has certain obvious strengths when it comes to drug court authority, not the least of which is legitimacy for all parties involved, including the program staff. Consistent with this are the results of a court study from Missouri (Myers, 2004) that conclude that most court administrators and staff would prefer a complete separation from the executive branch of government. In fact, more than three quarters of those surveyed wanted to report solely to the supervising judge (Myers, 2004). This suggests that judicial oversight is the most effective means of control of court employees and is an implicit argument for the efficacy of judicial management structures in general. Arguments for increased local control by executive officials therefore run counter to the orientation of the actual court employees, assuming that these findings are generalizable outside of Missouri. Consistent with Rehnquist (1996) and COSCA (2001), it was made clear by a majority of respondents that the executive branch should not involve itself in the judging of cases, and that the court structure should be separate from executive control (Myers, 2004). Taken together, this is a clear argument for a judicial approach from the ground up.
External legitimacy is also crucial. On the whole, state-level judicial budgets tend to be more consistent year to year than their executive branch counterparts, due to the legal requirements of the judiciary. These requirements usually force legislators to maintain funding stability over time. This, in turn, can create stability for court programs under judicial purview, such as drug court programs, but only when drug court funding is expressly a part of the judicial budget. Although the interviews suggest that funding stability is unrelated to choice of drug court administration model, strong ties to the more placid judicial branch may affect the perception of stability. It seems likely that the appearance of greater stability could actually lead to greater stability in the long run.

Legitimacy and the related issues of accountability and responsibility have driven changes at the state level in the past. The state of Louisiana, for example, shifted its funding for drug courts from the Office of Addictive Disorders to the state supreme court in 2001. This shift was driven by concerns about funding but also by the concerns of drug court judges, who felt isolated and abandoned in their roles without judicial support. This move was made possible due to the unified nature of Louisiana’s courts and strong support from the state’s supreme court justices. Further, the Louisiana Supreme Court alleviated executive branch concerns regarding this transition by contracting with the previous state director of treatment of the Office of Addictive Disorders to ensure that the quality of service would continue uninterrupted regardless of the administrative shift (Fox & Wolfe, 2004).

In 2005, the Wyoming State Substance Abuse Division conducted a series of drug court community meetings that provided the authors with information regarding the opinions of drug court judges on the subject of drug court administration. Similar to the situation in Louisiana, several judges mentioned similar concerns about their isolation. This isolation stemmed from a feeling that the drug court program is an “add-on” to traditional court functioning. This, combined with the lack of unified support and codified judicial rules for drug court, created the sense that programs were perpetually operating on an ad hoc basis and not as part of the overall judicial structure. Wyoming, like Louisiana before 2001, uses the executive model; it seems likely that this problem may have been mitigated through a similar shift to judicial branch oversight.

Still, the judicial branch model suffers from legal and philosophical challenges that are different yet as equally daunting as those with the executive branch approach. One of the major philosophical weaknesses of judicial branch administration of drug courts is the resolution of those legal claims that all legal interventions generate. Whereas state supreme courts are the highest legal authority in each state, the funding and administration of drug courts solely through the judicial branch creates an automatic conflict of interest in the adjudication of the lawsuits that inevitably arise. For example, in Maricopa County, Arizona, the county attorney filed a case against two driving under the influence (DUI) court programs (Archibold, 2006). These programs were specifically tailored to meet the needs of Spanish-speaking and Native American offenders. The county attorney alleged that these programs violated both the U.S. Constitution and other laws “barring discrimination on the basis of race or ethnicity” (Archibold, 2006). Due to the nature of the allegations and the inherent conflict of interest, the case had to be filed in federal district court, which created an uncomfortable situation for the Arizona court system.

Accountability, though not a problem internally for a top-to-bottom judicial structure, becomes a salient interbranch issue. Drawn from a collaborative conference on the funding of state courts, Funding the State Courts (Tobin, 1996) deals with this theme: “The lack of clear guidelines for judges on how to deal with officials of the other branches, particularly in budgetary matters, exacerbates the isolation and lack of mutual education” (p. 4). Furthermore, attempts to extract more “accountability” from the judiciary are often met by stiff resistance, not from an inherent objection to the idea but because these attempts are often viewed as challenges to judicial power and independence. In these situations, the judiciary sometimes views accountability as a code word that contests judicial authority. Tobin (1996) suggests that a certain amount of tension with the legislature is created by this perception that the courts must be reined in. This can make it difficult for courts to obtain the resources they need to effectively perform their duties. A lack of communication between the legislature and the courts means that often courts can learn of unfavorable budgetary changes long after anything can be done about them. This strongly suggests that interbranch lines of communication should be open and continuous, rather than consisting solely of brief budgetary
sessions. This is particularly true for drug courts because their funding could be seen as nonessential for the operation of state judicial structures.

Intermittent or contentious funding, especially as a by-product of judicial feuds with state legislatures, is at odds with the idea of ensuring quality drug court service. If legislatures are serious about institutionalizing drug courts, then the funding issue must be permanently resolved, and in a way that enables consistent decision making through administrative stability. A cooperative, ongoing dialogue may be the best way to address this. It may further serve to insulate the court system from inevitable legislative crises and conflicts of interest. COSCA (2001) suggests that ongoing communication is fundamental for transparency and solidarity in a way that is consistent with this conclusion:

By expanding and routinizing formal and informal interbranch communications, state judiciaries can familiarize the other branches with the problems and needs of the courts. Productive working relationships, once established, foster an ethos of mutual understanding that reduces resistance and misunderstandings. Some examples of how this can be accomplished include: arranging informal meetings between the Chief Justice and the Governor to discuss basic concerns, or with legislative leaders . . . and scheduling meetings with groups of judges and legislators to exchange ideas and have a continuing dialogue on justice system issues. (p. 6, our emphasis)

However, despite the strained the relationship between the legislature and the courts, it pales beside the executive/judicial dynamic:

Officials asserted that the executive branch interfered in financial administration, particularly in inhibiting the transfer of appropriations between budget categories and in conducting audits. Court officials felt that each new gubernatorial administration changed the ground rules and budget strategy, sometimes intruding into budget matters from which the governor is constitutionally excluded. (Tobin, 1996, p. 7, our emphasis)

Often too, the politicization of various judicial matters—that is, crime and drugs—creates mandates from the executive branch that go unaccompanied by a commensurate increase in funding to cover the increased adjudicative activity. In terms of drug court specifically, Tobin’s (1996) more general suggestion seems prudent: the formation of collaborative committees where these problems can be insulated from the governmental branches at large.

Finally, the judiciary, by definition and by choice, lacks overall program administration experience, particularly in the realm of substance abuse treatment. Although successful drug court judges usually acquire these skills through time and experience, there is no standardized accreditation process through which they can be trained. Thus, the learning curve for drug court judges is rather akin to “sink or swim.” Although national trainings and programs have attempted to remedy this deficiency, there is no substitute for actual medical and clinical training. Thus, one primary function of the collaborative drug court team is to advise the judge on these matters. Perhaps this lesson can be applied also at the state administrative level, creating a model for the executive and judicial branches. Rather than the rotating cast of characters that is endemic to government at all levels, a permanent body empowered to undertake exactly those actions would provide for ongoing dialogue and an institutionalized presence for drug courts. Personal relationships, though valuable, disappear as the individuals involved matriculate or retire. An intermediary third party agency could institutionalize the communication process. This could be an expedient way to prevent communication breakdowns between governmental branches. As with executive drug court models, judicial models must incorporate the input from their counterparts to successfully navigate the hurdles posed by their particular method of administration. Although there may be other ways to accomplish this, a third party agency seems the most direct.
Collaborative Model

A collaborative approach can bring together the strengths of both the executive and judicial models. When the administrative structure at the top of the state hierarchy more closely reflects that of the “on the ground” practitioners, each member of the local drug court team can feel more secure in their respective hierarchical support. Mutual involvement from multiple branches of government allows for oversight of judicial functions (i.e., judges and in-court activities) and executive functions (i.e., substance abuse treatment and probation services) as well as enabling unified presentation to the legislature. However, this collaborative approach is comparatively difficult to enact, which reflects its relative scarcity.

Of the interviewees, Idaho and California reported having collaborative funding and oversight mechanisms. The Idaho model is statutorily defined and relies on a strong interagency agreement between the judicial and executive branches, which splits the drug court funding between the two. The executive branch manages all aspects of the substance abuse treatment programs, whereas the judicial branch manages funds for the rest of the drug court program activities. A statewide coordinating committee, which includes representatives from all three branches of government, as well as other program stakeholders (i.e., prosecutors, defense council, treatment providers, etc.), is responsible for the program as a whole. Program management is overseen by the Idaho Administrative Office of the Courts, whereas funding for treatment is managed exclusively by the executive branch. Funding for judicial functions comes from a dedicated surcharge on alcohol sales to support drug and family courts.

California’s collaboration is manifested in the development of two divergent funding streams and the formation of strong interbranch committees to manage them. California’s split drug court funding comes with a legislative requirement that it be “coadministered” by an Executive Steering Committee cochaired by the deputy director of the Department of Alcohol and Drug Programs (executive branch) and a judge from the Judicial Council (judicial branch). Essentially, except for a $1 million line item directly to the judiciary, the rest of California’s $21 million in drug court funding is jointly administered. In both cases, though funding comes from various sources to various agencies, the ultimate authority is a collaborative committee comprising those actors involved. Everyone has a voice.

While a strictly collaborative model appears to provide the best of both worlds, there are some potential weaknesses that arise from this approach. The first is the territoriality that automatically follows funding. Those state directors that reported a collaborative approach stated that this problem had to have been handled through strategic legislation at the inception of the programs or the model would not have been successful. Thus, this approach mandates legislative foresight and clear wording to prevent later problems. Additionally, the lack of an official final authority for these approaches is a concern. Although collaborative model states seem to have developed a good balance for handling difficult issues through their coordinating committees, these arrangements have yet to be seriously challenged. It became clear during the interviews that drug court programs bank on current goodwill between governmental branches and strong support of the drug court model by the current leaders in their respective branches. Interviewees reported no emerging reasons why this cooperation might collapse—indeed, it appears to grow stronger as time passes. However, if these elements are not preexistent in a particular state, it seems highly unlikely that the collaborative model would work effectively in times of conflict. Although potentially valuable for maximizing the strengths of appropriate agencies and avoiding structural controversy, a collaborative initiative must be approached with methodical deliberation and characterized by well-defined roles, extensive knowledge of drug courts, and clearly delineated authority.

Overall, even in states subscribing to noncollaborative models, a growing number of states are forming these legislatively required advisory committees comprising members of all three branches of government and other stakeholders. Those with collaborative models, of course, invest these committees with the bulk of the administrative decision-making and funding responsibility, but the idea is applicable across the board. The first obvious strength of this approach is that various administrative roles can still be fulfilled by the appropriate authority
or agency, minimizing separation of powers issues. Second, through preexisting administrative mechanisms, each branch can provide accountability and legitimacy for the components of the programs for which they are responsible. Thus, judges, probation officers, and treatment professionals are responsible to those respective agencies that have traditionally provided their funding and oversight. This alleviates concerns from both the judicial and executive models. Finally, there is the potential for disagreements to be resolved internally by the representative body to which drug court answers, thus short-circuiting potential interbranch conflicts or destructive competition for legislative funding.

Stability of Drug Court Funding: A Legislative Issue

Important as the judicial and executive branches are in the administration and management of drug courts at the state level, funding ultimately comes from the state legislature. Clearly, the stability of funding is crucial to the smooth operation of drug court programs. Despite the importance of administrative model choice for drug courts, however, funding stability appears not to be strongly related to this variable. “Very stable” or “fairly stable” drug court funding was manifested in all three models in the interviews. The only qualification to this is that the only state directors to report nonstable drug court funding came from judicial model states. Although judicial models overall may appear to have more inherent stability, clearly this is not always the case and may depend on other variables. Both directors, for example, linked their funding instability to legislative insecurity about drug courts.

In general, however, state directors generally reported relatively stable drug court funding even when they saw the overall state budget as less predictable (see Table 1). Not surprisingly, those states with the greatest levels of stability suggested that this stability arose from strong legislation and well-defined, supportive leadership in all three state branches of government. In addition, court program stability appears to be partially a function of the age of each state program; as might be expected, older programs reported greater stability than did more recent ones. More important than which model a state chooses to enact, it is these factors that influence funding stability and in turn provide for better implementation and sustainability of drug courts. Tentatively, it appears that active cooperation of all three state branches of government, often through a multilateral commission of some sort, can help ensure stable funding. Neither of those states that reported unstable funding employed multilateral commissions.

Finally, drug courts do not exist in a vacuum. Drug court money would be funneled elsewhere had drug courts never been implemented. Where that money would go is different for each state, but it should ultimately be a reflection of where drug courts’ benefits are felt—that is, what part of the budget benefits the most from drug courts. When asked this hypothetical question, a substantial majority of state directors hypothesized that the money would return to the executive branch to be used for correctional purposes. Philosophically, this indicates that states are embracing the fact that drug courts save money that would otherwise be spent incarcerating participants. California, for example, statutorily requires regular cost/benefit analyses to support this claim. Even more important, this finding indicates that the money not saved by the establishment of drug courts would represent a drain for the executive branch, that is, through the Department of Corrections. Overall, this finding suggests that drug courts should maintain their strong links to executive administration and not be considered “just another court program.”

Conclusions and Recommendations

Drug court is a relatively new innovation in jurisprudence that requires significant collaboration between arms of the government that are traditionally unaccustomed to working together. As such, considerable strategic consideration must be devoted to the issues of funding, management, oversight, and separation of powers. Although there is no silver bullet in the administration of state drug court programs, each model presented here has separate strengths that may be suitable in different situations. Executive branch models provide strong support and oversight for the treatment and supervision components of drug courts while creating some philosophical and practical concerns about separation of powers. Judicial models partially resolve these issues and provide legitimacy for programs but often lack program management capability and expertise for nonjudicial components such as
substance abuse treatment. The states that have been successful in maintaining satisfactory administrative control of programs over time tend to employ models that, like local programs, provide collaboration at the highest levels. If state administration of drug courts were viewed as a continuum, with fully judicial models on one side and fully executive models on the other, those in the middle tend to be the most successful. This does not necessarily mean that states must completely embrace the collaborative model but perhaps simply a collaborative approach. For example, an administrative structure housed in the judicial branch might still use a steering committee comprising members from multiple branches of government and funding schemes that provide appropriate levels of continuity and oversight.

Three important recommendations emerge from this discussion. First, for states to have strong program stability, they must have specific enacting legislation that is supported by authoritative programmatic controls. Bluntly, the legislation must have teeth. It is not enough to simply define and provide blanket funding for drug courts. State drug court directors reported that legislation must also contain language pertaining to a second recommendation: the establishment of joint oversight committees with judicial and executive branch involvement and authority to create and enforce rules. It might also be helpful to include other relevant stakeholders, regardless of branch affiliation. This committee must have the ability to definitively answer specific legal and programmatic questions that arise during the course of drug court operations. Further, the committee must be invested with some legal authority to provide accountability and legitimacy for the program judges. Also, the committee should work to implement a third recommendation, namely, the creation of specific judicial rules regarding drug court operations. The rules must be broad enough to include the various systems employed by drug courts but should be specific enough so that judges can refer to them as unfamiliar issues arise. Finally, overall collaboration by drug court advocates with the legislature is crucial for eventual funding stability. Even in often-tumultuous state budgets, drug court program funding can achieve stability with full legislative buy-in to create strong and specific enabling legislation. All of these recommendations are critical, regardless of which model a state has enacted.

When designing, shifting, or revising a statewide drug court management plan, it is clear that state administrators, legislators, and judges must take a strategic approach. Program management infrastructure must be considered carefully and include issues of staffing, data collection, management, and funding. Guidelines must be incorporated to ensure adherence to the drug court model and the quality of services provided for program participants. Perhaps most important, the judicial framework must be crafted in such a way as to allow drug court judges to maintain their status as independent arbiters of the law while serving in this new role. The evidence strongly suggests that a judge’s legal authority must be inviolate.

There are myriad pitfalls into which any well-intentioned branch of state government might fall in attempting to establish the administration of drug courts. Though certainly an admirable goal given diminishing federal funding, an honest appraisal of where the state should house its drug court authority is required. Whichever direction a state decides to go, it must, at all times, remember that drug court is a collaborative activity and that this must be reflected at every level of its implementation.

References


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