



NATIONAL COUNCIL OF  
JUVENILE AND FAMILY COURT JUDGES

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THE ROLE OF  
**DEFENSE ATTORNEYS**  
IN JUVENILE DRUG TREATMENT COURTS

**RECOMMENDATIONS FROM THE FIELD**



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In October 2018 and March 2019, the National Council of Juvenile and Family Court Judges (NCJFCJ) conducted focus groups with juvenile defense attorneys from around the country who represent youth in juvenile drug treatment courts (JDTCs). The purpose of the focus groups was to develop an understanding of the unique challenges and competing roles of defense attorneys who serve in JDTCs. This brief is a summary of how they view their roles and the recommendations they would give to navigate ethical, legal, and practical challenges in JDTCs.

## WHY DOES THE JUVENILE JUSTICE SYSTEM NEED A JDTC?

JDTCs are specialized dockets within the juvenile justice system that provide targeted services to youth who have concurrent incidents of delinquency and substance use disorders. JDTCs are part of a larger body of problem-solving courts that are characterized by a team approach, frequent judicial monitoring, and the use of strength-based, cognitive behavioral modification techniques to reduce criminal behavior and substance use.

The United States faces a serious substance use problem among youth. In 2017, an estimated 992,000 (4.0 percent) adolescents aged 12 to 17 had a substance use disorder (SUD), and an estimated 5.1 million (14.8 percent) young adults aged 18 to 25 had an SUD (i.e., met the DSM-IV criteria for either dependence or abuse for alcohol or illicit drugs.<sup>1</sup>) Given the link between substance use and delinquency,<sup>2</sup> JDTCs were created to serve youth who have a substance use disorder and pose a moderate-to-high risk of reoffending by providing them with specialized treatment and services. While eligibility criteria sometimes differ across jurisdictions, recommended practices<sup>3</sup> suggest that eligibility criteria should include the following:

- Youth with a substance use disorder;
- Youth who are 14 years or older; and
- Youth who have a moderate to high risk of offending.

Substance use disorder and risk of reoffending should be identified through validated screening and assessment instruments.

<sup>1</sup> Substance Abuse and Mental Health Services Administration. (2018). Key substance use and mental health indicators in the United States: Results from the 2017 National Survey on Drug Use and Health.

<sup>2</sup> CASA. Criminal neglect: Substance abuse, juvenile justice, and the children left behind. New York: National Center on Addiction and Substance Abuse at Columbia University; 2004. See also Belenko S, Sprott JB. Paper presented at the Academy of Criminal Justice Sciences annual conference. Anaheim, CA: 2002. Mar, Comparative recidivism rates of drug and nondrug juvenile offenders: Results from three jurisdictions.

<sup>3</sup> Office of Juvenile Justice and Delinquency Prevention (2015). *Juvenile Drug Treatment Court Guidelines*. U.S. Department of Justice. P.7. Available at <https://www.ojjdp.gov/pubs/250368.pdf>.

JDTCs are, by design, problem-solving courts, and within this framework various stakeholders collaborate to find innovative and effective strategies and solutions to address substance abuse and delinquency specific to cases processed in JDTCs.<sup>4</sup> Organizations that serve youth across several systems that identify common goals, agree to share resources, and coordinate effectively through a strong stakeholder team experience greater success with their interventions.<sup>5</sup> Defense attorneys are an essential stakeholder and team member on any JDTC, and research supports that youth have better outcomes when defense attorneys are at the table.<sup>6</sup>

## WHAT IS THE ROLE OF THE DEFENSE ATTORNEY IN JDTCs?

While recommended practices<sup>7</sup> suggest that defense representation is an integral part of the operation of these courts, there is no doubt that the role of a defense attorney in a JDTC is a large and complex one. To ensure positive outcomes for youth in this collaborative setting, defense attorneys must be a fully integrated team member committed to the mission, goals, and objectives of the program. Defense attorneys in JDTCs adopt a shared vision of their young client's life free of drugs and alcohol, school failure, and dysfunction while at the same time protecting their constitutional rights and representing them as individuals.

<sup>4</sup> Bureau of Justice Assistance (2003). *Juvenile Drug Courts: Strategies in Practice*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

<sup>5</sup> Campie, P.E., and Sokolsky, J. 2016. *Systematic Review of Factors That Impact Implementation Quality of Child Welfare, Public Health, and Education Programs for Adolescents: Implications for Juvenile Drug Treatment Courts*. Washington, DC: American Institutes for Research.

<sup>6</sup> National Association of Drug Court Professionals. 10 June 2009. Position Statement of the Board of Directors on Defense Counsel in Drug Courts. National Drug Court Resource Center.

<sup>7</sup> Office of Juvenile Justice and Delinquency Prevention (2015). *Juvenile Drug Treatment Court Guidelines*. U.S. Department of Justice. P.11. Available at <https://www.ojjdp.gov/pubs/250368.pdf>.

## YOUTH'S ATTORNEY

The primary responsibility of the defense attorney is to protect the interest of the youth while they are in the program. The defense attorney represents the expressed interests of and advocates for the youth giving them a voice in court.<sup>8</sup> Defense attorneys in JDTCs must explain every aspect of the treatment court to their client. They should also advise youth of their legal rights, their legal options, treatment options, and sentencing outcomes as well as the structure, rigor and expectations of the program. It is also important to have an honest conversation about drug testing, treatment, and ancillary services as well as what will happen to them if they are successful and the conditions by which they would be terminated.

## ADVOCATE FOR YOUTH

As a team member, the defense attorney should advocate for youth regarding a variety of JDTC program practices. This includes ensuring a risk/need assessment is completed to understand a youth's risks, needs, and strengths resulting in the development of an individualized case plan that meets the youth's needs, builds on strengths, and helps the youth achieve goals.<sup>9</sup> Defense attorneys must also advocate that the JDTC team provide youth with the supports, services, and opportunities they need to be successful. This advocacy role also includes ensuring that the team asks about and responds to a youth's and family's cultural context, preferences, interests, goals etc. The advocacy role should be proactive in nature, rather than reactive, seeking strategies (treatment, services, frequent communication, etc.) to prevent further legal trouble.

## JDTC TEAM PARTNER

The defense attorney should participate fully as a JDTC team member, be committed to the program's mission and goals, and work as a collaborative partner in a non-adversarial atmosphere to ensure the success of the youth as well as the program.<sup>10</sup> As such, defense attorneys should be included in pre-court staffings, hearings, team communication, team decision-making, information sharing and all team trainings. The attorney's role in staffing is to ensure that incentives and sanctions are fair, consistent, of appropriate intensity, and are based on factual

information, and that the youth has input in the process.<sup>11</sup>

## DESIGN AND IMPLEMENTATION OF THE COURT

The defense attorney should also participate at the system level with the court team in the design, implementation, and operation of the JDTC; determination and adherence to participant eligibility criteria; selection of service providers; and the development of policies and procedures. The defense attorney also has a role in ensuring that the court and the team are adhering to evidenced-based practices when dealing with youth in the program. As a system partner, the defense attorney protects the integrity of the program by monitoring the youth's care and pointing out deficiencies of the program and ways to address those deficiencies.

## WHAT SHOULD THE DEFENSE ATTORNEY KNOW?

The defense attorney in a JDTC plays various roles, some of which are different from the roles played by defense attorneys outside of JDTCs. Therefore, it is important that the defense attorney is aware of the unique characteristics of JDTCs and wants to be a part of a team and work with youth and families to assist the youth in becoming drug and crime free.

As with any attorney, the defense attorney should receive ongoing and routine training and legal education to be an effective member of the JDTC team.<sup>12</sup> To serve youth well, they should receive a thorough orientation to JDTC process and receive training in and have a good working understanding of recommended practices<sup>13</sup> which provide guidance on treatment, case planning, incentives and sanctions and family and school engagement. In addition to the foregoing, there are three fundamental guidelines that defenders need to know and enforce in a JDTC:

1. Only youth with a substance use disorder and who are 14 years or older and at moderate to high risk of offending should be admitted to a JDTC.<sup>14</sup>

<sup>11</sup> National Association of Drug Court Professionals, *supra* note 6.

<sup>12</sup> Office of Juvenile Justice and Delinquency Prevention (2015). *Juvenile Drug Treatment Court Guidelines*. U.S. Department of Justice. P.13-14. Available at <https://www.ojjdp.gov/pubs/250368.pdf>.

<sup>13</sup> Office of Juvenile Justice and Delinquency Prevention (2015). *Juvenile Drug Treatment Court Guidelines*. U.S. Department of Justice. Available at <https://www.ojjdp.gov/pubs/250368.pdf>.

<sup>14</sup> *Ibid.*, 16.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, 25-28.

<sup>10</sup> *Ibid.*, 10.

2. Incentives and sanctions are used solely for changing behavior and therefore need to be tied to goals and the case plan.<sup>15</sup>
3. Detention is an absolute last resort and only for a short duration if the youth is at risk of fleeing or a danger to themselves or others.<sup>16</sup>

The defense attorney should also be familiar with the research on substance use, effective treatment options, and JDTCs in general. To remain well informed, the defense attorney can turn to various online resources.

### Substance Use Resources

- Recovery Research Institute: [www.recoveryanswers.org](http://www.recoveryanswers.org)
- National Institute for Drug Abuse: [www.drugabuse.gov](http://www.drugabuse.gov)
- Substance Abuse and Mental Health Services Administration: <https://www.samhsa.gov/>

### Adolescent Treatment Resources

- NCJFCJ Adolescent-Based Treatment Interventions and Assessment Instruments: <https://www.ncjfcj.org/publications/adolescent-based-treatment-interventions-and-assessment-instruments/>
- Understanding and Using Brief Interventions in the Juvenile Justice System: <https://www.ncjfcj.org/publications/understanding-and-using-brief-interventions-in-the-juvenile-justice-system/>

### Juvenile Drug Treatment Court Resources

- National Association of Drug Court Professionals: [www.nadcp.org](http://www.nadcp.org)
- NCJFCJ Juvenile Drug Treatment Court Information Center: <https://www.ncjfcj.org/child-welfare-and-juvenile-law/substance-abuse-and-opioids/jdtk/>
- Critical Issues for Defense Attorneys in Drug Court <https://www.ndci.org/resources/critical-issues-defense-attorneys-drug-court/>

## SKILLS AND ATTRIBUTES

First and foremost, defense attorneys in JDTCs must be highly qualified and dedicated with at least one year of practice in juvenile delinquency court with access to training and resources on par with attorneys practicing outside of JDTCs or in adult criminal cases. JDTCs and juvenile courts as a whole should not be viewed as a training ground or resting place where defense attorneys rotate frequently without regard to

<sup>15</sup> Ibid., 23

<sup>16</sup> Ibid., 30

their skills and experience. Given the roles defense attorneys play in JDTCs, additional skills and attributes necessary for the position include the ability to:

- recognize and respond to ethical issues and maintain professional boundaries
- communicate effectively and foster positive working relationships within a collaborative environment and build relationships within the broader community
- understand, engage and communicate with youth and families to help them navigate the JDTC and achieve goals
- identify problems and seek solutions that support the goals of the JDTC
- train and share information with new members of the JDTC team

## CHALLENGES

The role of the defense attorney in a JDTC is complicated and different from that of other team members, and therefore defense attorneys often wrestle with their role and purpose in these courts. Most, but not all, of the challenges faced by the defense attorney in a JDTC are ethical dilemmas.

### CHALLENGE

The JDTC has accepted the wrong youth either by design or by decision, and the court ends up with youth who are at low risk for reoffending or do not have a substance use disorder. This results in net widening and places the youth in a more intensive intervention than necessary.

### RECOMMENDATIONS

- Refer the team to recommended practices<sup>17</sup> which clearly describe the appropriate criteria for participation in JDTC and ensure your JDTC is aligned.
- Ensure the court is aware of and follows the eligibility criteria when referring youth to a JDTC.
- If exceptions to the criteria are made and agreed upon by the JDTC team, ensure the reasons are documented and on the record.

### CHALLENGE

Confidentiality issues often arise when defense attorneys have information that might mitigate or explain the youth's behavior or information that may risk the youth's continued

<sup>17</sup> Ibid., 16a

participation in the JDTC. Confidentiality issues also surface when JDTC team members believe that what is said in team meetings should not be shared with the youth.

## RECOMMENDATIONS

- Ensure the attorney-client privilege is maintained, despite the legitimacy or relevance of the information.
- In cases where the youth has divulged hurtful information, encourage the youth to be forthcoming as it may go better than if the information comes to the attention of the court by other means.
- Advocate for complete confidentiality and immunity for any statements made by youth during the JDTC process, and communicate to the team that defense attorneys have a duty to share information discussed in team meetings with youth.
- Advocate that confidentiality issues are reflected in the agreements between the youth and the court and a matter of JDTC policy, and ensure the JDTC disclosure of information form is no broader than necessary.

## CHALLENGE

The defense attorney in a JDTC is often faced with the competing roles of representing the youth's expressed interests as well as best interest. For example, the team requests a sanction and you agree but the youth prefers an alternative sanction or the youth wants something that you believe is not in their best interest. Similarly, the youth may express different interests from those of their parents.

## RECOMMENDATIONS

- Remember ethical rules require defense attorneys to work toward achieving the youth's expressed interests.
- Consider asking the court to appoint a guardian ad litem (GAL) to advocate for the best interest of the youth, thus creating separate roles.
- Negotiate with youth when they want something that is not in their best interest and teach them to articulate why they want it to help them advocate for themselves.
- Consider the youth's interests and needs through an adolescent development lens which recognizes youth are different from adults and therefore may not interact, communicate, plan ahead, or identify possible risks like adults. Your knowledge of adolescent development can help make more persuasive arguments or craft an alternative for the youth when it comes to advancing

their point of view.

## CHALLENGE

In some JDTCs, there is a tendency to impose unnecessarily harsh or punitive sanctions and over rely on the indiscriminate use of detention or incarceration for behaviors such as missing school, positive drug screens, or violating curfew.

## RECOMMENDATIONS

- Recognize the inevitability of noncompliance by youth and ensure that appropriate incentives and sanctions are used to motivate behavior change.
- Ensure detention is used only when a youth is at risk of fleeing or a danger to themselves or others and not as a sanction for non-compliance.
- Be an active participant in the creation of incentive and sanction policies and procedures for the JDTC.

## CHALLENGE

There are times when juvenile public defenders appear in court as private counsel or conflict attorney on post disposition cases. This poses a challenge because the attorney does not know the youth personally, and it is especially tricky when the youth is facing a sanction or a new charge.

## RECOMMENDATIONS

- Develop a policy that clarifies each team member's responsibilities in these situations.
- Ask the judge to continue the matter until the youth's counsel of record can appear.
- Advocate that new offenses be handled within and that the youth remain in the JDTC whenever possible. If the new charge is not handled in the JDTC, the youth should be represented by the JDTC attorney or another appointed attorney in front of a different judge.

## CHALLENGE

Defense attorneys often see inequities in access to the JDTC and related program components (e.g., incentives and sanctions, treatment services) based on race, gender, or sexual orientation/identity that need to be addressed to ensure equal access to the benefits of JDTCs.

## RECOMMENDATIONS

- Ensure eligibility criteria align with recommended

practices<sup>18</sup> and that no other criteria are added that lead to inequities, such as transportation, ability to read, IQ, ability to pay restitution, or health insurance.

- Collect and analyze data early, often, and in multiple ways to identify any inequities. As defenders, it is important to pay attention to who is accepted (and who is not) into the JDTC, how long youth are in each phase, the use of incentives and sanctions, who is graduating, and who is terminated from the program. Answering these questions will help identify and respond to inequities that may exist.

## CONCLUSION

JDTCs were developed to improve the lives of youth in the juvenile justice system with substance use disorders, mental health issues, and trauma, while supporting public safety, holding youth accountable, and reducing recidivism. The role of the defense attorney in the JDTC is complex and challenging but can also be rewarding and impactful. Through advocacy, representation, and collaborative working relationships, defense attorneys play a vital role to ensure youth receive the benefits of JDTCs and are actively engaged in pathways toward success. The practice of using screening and assessment tools to ensure early access to evidence-based services, as well as increased communication and support across systems, bodes well for the future of youth who enter JDTCs. Just imagine the impact of stopping the revolving door and pipeline to the adult criminal justice system by improving outcomes for all youth who enter the juvenile justice system.

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<sup>18</sup> Ibid.



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