

A Primer on Washington County Adult Treatment Court

Washington County State's Attorney Rory T. Thibault - January 31, 2019

Introduction

Upon my appointment as State's Attorney for Washington County, I was fortunate to inherit a treatment court that already had credibility in the community, among law enforcement, commitment from the treatment team members, and an incredibly able Treatment Court Coordinator.

As I start my new term, today, I hope to expand the reach and success of our treatment court over the next four years. In the past year, I have learned quite a bit about treatment court, and three main points are important to share with you:

First, treatment court isn't what you think it is. A lot of what I thought I knew or assumed about treatment court was not accurate. Treatment court is not a be all end all solution to the drug epidemic in my county. It is a valuable tool, but it is not suitable for every individual facing criminal charges that has a struggle with addiction. It is a response that can be highly beneficial in some cases, but may be too onerous or insufficient in others.

Second, aligning the constellation of services is critical. The treatment court program alone cannot meet the needs of some participants. The support of the Department of Corrections is integral to the success of the most challenging cases. Dual-tracked treatment court and probationary or furlough outcomes bring to bear the services and support of Department of Corrections. This can be especially critical in quickening the response to relapses or situations where sanctions are appropriate – but more critically, probation officers provide an expert level of case management to assist with challenges revolving around sober housing and other treatment services.

Third, treatment court is time and resource intensive. I devote a significant amount of my time and energy on treatment court, and commit approximately one-quarter to one-third of a Deputy State's Attorney's available time to a treatment court docket of less than 50 cases in a year. Nevertheless, I believe the time and emphasis on treatment court is a wise investment of resources – the time and energy yields clear long-term benefits for individuals' lives and public safety generally, while saving money compared to incarceration that would be called for in many of these cases. The dedication and professionalism of our case workers and coordinator has undoubtably saved lives that would otherwise have been lost long ago.

Treatment court demonstrates that the public health response and criminal justice response to addiction cannot, and should not, be siloed. They are interconnected

and the “carrot and stick” model of treatment court is an effective means to promote recovery and sound decision making by those struggling with addiction and criminal acts.

Summary of the Treatment Team

Washington County’s treatment team presently includes Judge Mary Morrissey, a representative from my office and the public defender’s office, probation officers assigned to the Barre Probation and Parole office, the Barre City Community Outreach Specialist, case managers from medically assisted treatment providers, representatives from Washington County Mental Health Services, and the Treatment Court Coordinator. Additionally, a representative from the Barre City Fire Department occupies a position formerly held by a Vermont State Police Trooper as a representative of the public safety community.

My office is generally highly deferential to treatment team (especially the case managers and coordinator) with respect to treatment responses and sanctions. The role of the prosecutor tends to be more involved when there is a new criminal charge or violation of probation. Termination from treatment court is initiated by motion of the State, however, termination is seldom done without consensus or support from members of the treatment team (with the judge and defense counsel understandably playing a different role in such a determination).

In summary, the treatment team’s ability to cooperate and collaborate effectively is integral to the success and effective operation of the court.

The Prosecutor’s Role in Treatment Court

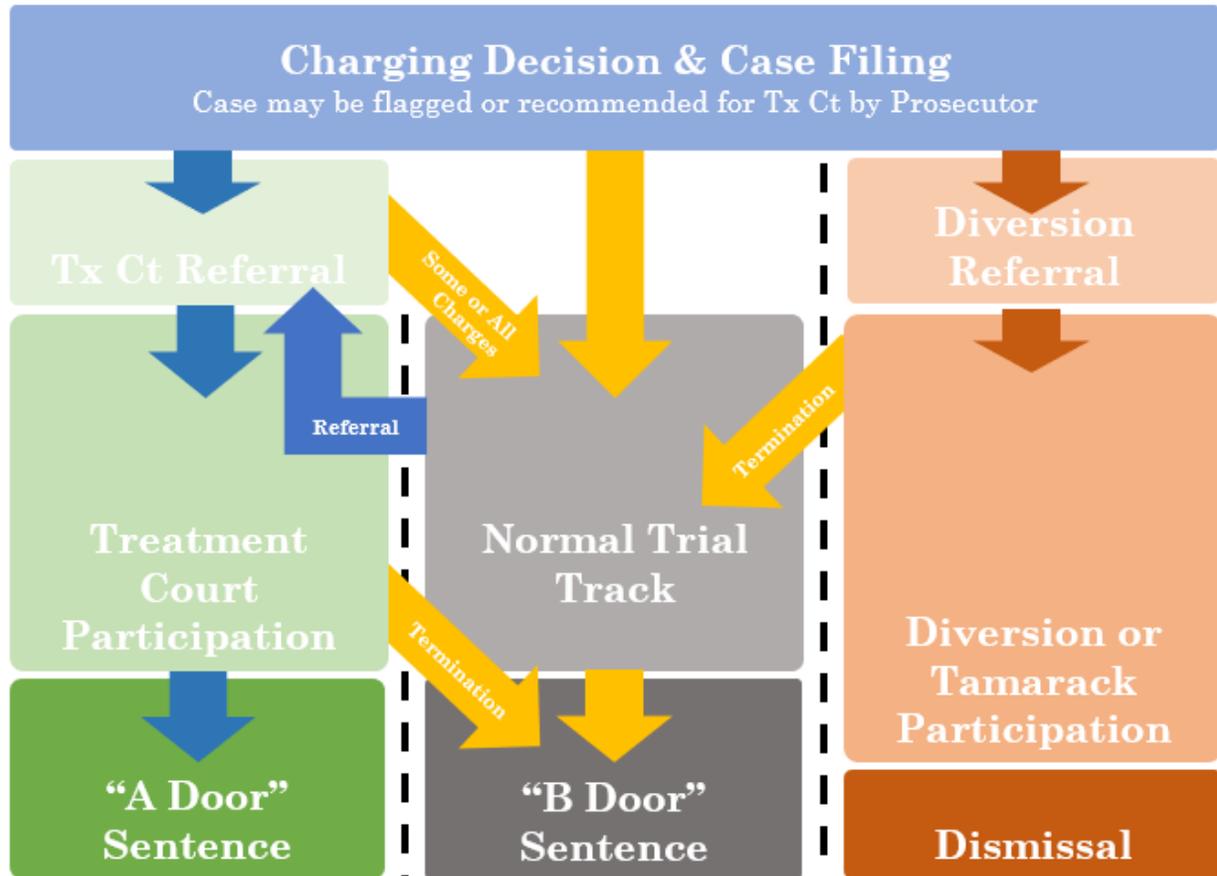
In my office, any prosecutor may flag a case for treatment court, and we often do so at case intake. Enclosure 1 is a copy of my office’s witness list/offer form that accompanies every case. We operate under the belief that early intervention is critical, although sometimes a problem does not become evident until multiple charges have emerged, or other rehabilitative attempts (e.g. Tamarack or probation) have proven to be insufficient.

In many cases, the defense counsel will make a referral. In such instances, my office initiates an internal treatment court referral consideration process, separate from that conducted by the Treatment Court Coordinator. Enclosure 2 is a copy of our internal routing form. We seek input from victims, law enforcement involved in the case, probation and parole (as appropriate), and the prosecutor assigned to the case and prosecutor assigned to treatment court make recommendations for my consideration.

In some cases, we decline to support a referral to treatment court. This is part of the general plea bargaining process, as the change of plea to enter treatment court

entails two offers: one based on successful completion (“A Door”), and one based on unsuccessful completion (“B” Door). In Washington County, we use fixed sentence structures, a variance from other counties, meaning there are clearly defined agreed upon outcomes rather than contested sentences.

Figure 1:



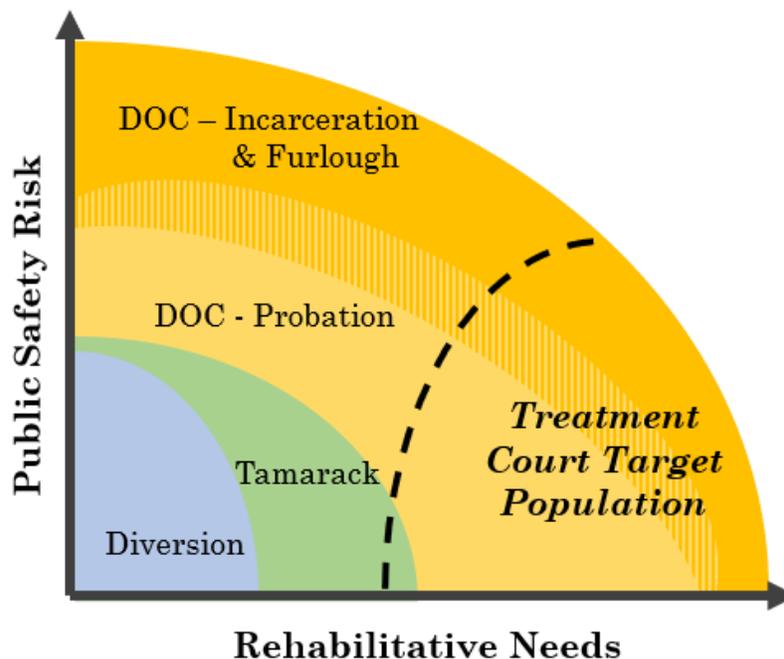
Many factors are considered when determining whether to support a treatment court referral, and if supported, what the appropriate “A Door” and “B Door” sentences should be. Typically, “A Door” sentences involve deferred sentences, and occasionally misdemeanor convictions that are expungement eligible at a later time. This incentivizes completion of the program – leaving defendants with little or no criminal record – a huge benefit when dealing with serious felony charges (e.g. burglary of an occupied dwelling). “B Door” sentences generally reflect the State’s offer and the likely outcome of traditional sentencing. These sentences often include some incarceration and long-term supervision by the Department of Corrections.

Some cases are not supported for referral, and the parties never reach accord on what an “A” or “B Door” sentence would look like. Reasons for not supporting treatment court referrals include:

- Criminal intelligence considerations (e.g. defendant is or has actively sold drugs to treatment court participants, or is engaged in trafficking);
- Defendant has uncharged misconduct (e.g. facing federal indictment, or out of state charges, that raise ethical considerations of supporting a case likely to end in termination or “B Door” outcome irrespective of defendant’s willingness to participate);
- Criminal history including sexual violence, escape charges, repeated violations of probation/parole;

My office has adopted a policy of looking to the individual, not the offense as charged itself. Our approach is to carefully consider all available information, and factor in community safety, victim input, the needs of the offender, and whether greater or lesser (e.g. Tamarack or traditional probation) responses are consistent with rehabilitation of the offender. Prosecutorial discretion is essential to the functionality of treatment courts, and no other party is situated or obligated to consider matters as divergent as sensitive interagency criminal intelligence or the victims wishes.

Figure 2:



My office strives to be creative. We have structured resolutions that place some, but not all offenses, in treatment court while resolving others in a traditional manner – often creating “dual enrollment” situations where an individual is on probation and in treatment court. This provides the confidence and supervision necessary to support cases that present a higher community safety risk into the program. Likewise, we have also accommodated and included violation of probation cases into treatment court – often allowing individuals the opportunity to avoid suspended sentence jail time, while increasing the wrap around supports the community can offer in addition to the Department of Corrections. In most cases, treatment court is not in lieu of probation, rather, it is in lieu of an incarcerative sentence. Ultimately, there are some limits to flexibility, but a whole person and whole spectrum of charges approach is a best practice to reach truly rehabilitative outcomes.

Factors Influencing Success

Historically, more than one-third of participants are unsuccessful and are terminated from treatment court. It is nearly impossible to predict who will or will not be successful. Rather than outright terminate, my office will oftentimes restructure “A” and “B Door” outcomes to integrate new offenses, or arrange for a dual-status of participation and probation to provide greater supervision in support of successful outcomes. Some common traits among individuals who are successful include:

- At least one strong support person (e.g. partner, parent, or friend);
- Overlapping CHINS or family court proceedings where sustained sobriety is beneficial to child custody or visitation;
- Stable housing;
- Stable Transportation; and
- Employment and employer support of treatment.

Age and gender do not appear to be significant factors in success or failure among participants. Outcomes are driven by individual circumstances, not necessarily by innate characteristics.

Cases that see sustained post-graduation success are often those where treatment court has influenced other positive changes, e.g. employment, new or renewed pro-social relationships, etc. Unsuccessful outcomes, including continued criminal activity are often related to:

- Lack of long term stability in housing or employment;
- Failure to adhere to aftercare plan, or insufficient period of post-graduation supervision;
- Partners/close family members who remain in active addiction;
- Inability to break away from malign social groups or life patterns / lack of long term pro-social influences or supports;
- Unaddressed criminogenic tendencies unrelated to addiction; and
- Unaddressed mental health issues.

Conclusion

Expansion of treatment court programs in the state is a worthwhile goal and endeavor. However, doing so must be done with cognizance that treatment resources and community supports are un-evenly spread throughout the state and local variance in terms of scope and quality of services will impact the operations of such courts. Likewise, strict or uniform guidelines, to include presumptions for referral of certain offenses or overrides of prosecutorial discretion are likely to be counterproductive to building community support, facilitating the interagency collaboration needed, and thwart more rapid availability of treatment court in counties that do not possess as many resources.

Ultimately, I encourage the legislature to recognize the great good that can come from a well-run and well-funded treatment court program, but to also acknowledge that this is a program tailored to a specific high-risk, high-need population. Treatment courts are not a solution to the drug epidemic, rather, they are part of the solution and we cannot ignore or neglect the need for quality treatment options and programing within the traditional Department of Corrections framework, nor the value of the Tamarack program in addressing lower risk cases.