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School of Law

Drug Courts in Puerto Rico from a Law Student's Perspective, and How They Are Becoming  
Anti-Therapeutic Everyday

Mariana Ortiz Casanova

Therapeutic Jurisprudence

Prof. David Wexler

## **Introduction**

As the first person in my family to go to law school, I was confused about how the law worked. I always knew I wanted to be a lawyer; I especially knew from a young age that I wanted to pursue a career in Criminal Law. During my first week in law school, everybody talked about internships and how cut-throat the interviews were. I had no idea that people were applying for internships so early in the semester. I was confused about what path I should take, being the first in my family to go to law school I had no idea what to do or who to reach out to.

I applied to the District Attorney's Office in San Juan, the next day I had my interview and was offered the internship. I was more than thrilled; I was finally doing something in a field I always dreamed of. Now I just had to pass my law school finals and wait for June to come.

June 6, 2022, was my first day at my new internship. I reported myself to my boss and he told me that I would be going to Drug Court that day. I had no idea what to expect. I was sitting next to the prosecutor who was assigned the Drug Court for the day. I was watching and analyzing everything that was happening. The first case was a young man, I would say he was about 25 years old, and he looked more or less my age. This was a follow-up hearing; he entered the courtroom with fear in his eyes. When his case was called, he was alone and without his lawyer. He was terrified, and the reason was that he had been randomly drug tested and it was positive for marijuana. The judge told him this was not his first time failing a drug test while in the program, and that her patience had run thin. She said to him that she would be ordering his admission to a correctional facility that day. The bailiff then handcuffed him and made him sit where a member of a jury would usually sit. He was there, handcuffed from 9 a.m. to 12 p.m.

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I was in pure shock. He was my age and was going to prison because he failed a drug test. The court kept attending other cases, and I occasionally looked at the young man and saw the fear in his eyes. I felt bad for him, I couldn't imagine what was going through his head at the moment. Before the judge declared a recess, someone from the Legal Aid Society came to his defense. The defense attorney stated that he was a bright young man and that he deserved another chance. She stated that he had been working hard with his mentor on his rehabilitation plan, that this was just a bump in the road, and that he was going to learn from this experience.

I had no idea if the judge believed the defense attorney or if scaring him with the fear of going to jail was the plan all along. She released him and told him he needed to get his act together, and that she believed in him and his road to recovery. He then left the courtroom with tears in his eyes and a sigh of relief. I then turned to the prosecutor I was shadowing that day and he said: "He got lucky." That was my first day in Drug Court and in the Criminal Justice System.

For this paper, I will focus on how the Drug Court System in Puerto Rico has become anti-therapeutic from a law student's perspective. I will be giving examples of how I have experienced Drug Court as a law student and how Law School teaches these types of programs. Moreover, I will be discussing the various Drug Court programs and how they are doing the opposite of rehabilitation. For example, *Hogar CREA* has created a lot of controversy due to its ways of rehabilitating the person. *CREA* focuses its rehabilitation process on religion and humiliation. Later, I will be giving recommendations from a TJ aspect about how we could improve these programs, and therefore more people could benefit from them.

## **Drug Court Programs and Their Requirements**

In Puerto Rico, there are specialized courtrooms that focus on cases that have to do with controlled substances, popularly known as *Drug Courts*. The Judicial Power of Puerto Rico defines Drug Courts as a program of the Judicial Power that attends, in specialized courtrooms, people accused of committing non-violent crimes concerning the disorder of intake of controlled substances and/or the problematic use of alcohol. Through a focus on Therapeutic Justice, the judges have more active participation in the process of treatment, rehabilitation, and recovery of the people being accused.<sup>1</sup>

The goals and objectives of the program are:

1. the rehabilitation and recovery of the participants;
2. the reintegration of the participants in society in a positive manner; and
3. the decrease in the commission of new crimes

The way the Judicial Power says they are going to reach these goals stated above, through these specialized courtrooms is:

1. with the contribution of the development of the participant's abilities in the effective management of their conduct;
2. by promoting the responsibility of the participants;

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<sup>1</sup><https://poderjudicial.pr/documentos/educoc/Programa-de-Salones-Especializados-en-Casos-Sustancias-Controladas.pdf>

“Es un programa del Poder Judicial a través del cual se atienden, en salones especializados del Tribunal, a personas acusadas de cometer delitos no violentos relacionados al trastorno por consumo de sustancias controladas y/o al uso problemático de alcohol. Mediante un enfoque de justicia terapéutica, los jueces y las juezas tienen una participación más activa en el proceso de tratamiento, rehabilitación y recuperación de las personas acusadas.”

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3. by monitoring the progress of the recovery process to promote the compromise the participants have with their treatment plan;
4. by strengthening the participant's social relations, occupational development, etc.; and
5. by promoting the collaboration between the Justice System, the government, and nongovernmental entities that provide treatment and support services, for the effective benefit of the necessary services that the participants need for their recovery.

The determination of the admission of a person into a Drug Court Program is carried out by a judge who takes into consideration the following aspects: having been accused of a non-violent felony; having a plead guilty; having an alcohol and/or substance abuse disorder; have an interest and provision to receive treatment and carry out the conditions the program has; no previous criminal record; the crime has to have a connection with the alcohol and/or substance abuse disorder; the determination of the level of care done by the Administration of Mental Health and Anti-Addiction Services (ASSMCA) or any other providers of treatment services authorized by the government; the investigation, report, and recommendations by the officer from the Puerto Rico Police Bureau; and the report made by the Department Corrections and Rehabilitation.

According to the Judicial Power, the judge issues a resolution of admission, in which they include the various conditions the participant must follow to be in the program. One of these conditions is that the person must be receiving treatment from an institution, governmental or non-governmental, to recover from their alcohol and/or substance abuse disorder. As part of the process, there is going to be a supervision and treatment plan in coordination with the Drug Court work group representatives.

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As part of the intense judicial supervision, the participant must appear for the follow-up hearings the court will schedule. If the participant demonstrates that they have been making satisfactory adjustments in their process of rehabilitation, the judge will recognize the effort that they have made and can authorize some sort of incentive, for example: privileges, reduce the number of follow-up hearings, or even reduce the original resolution. But, if the participant does not comply with the conditions the court has stated, the judge could impose sanctions or even revoke and order the imprisonment of the participant.

Once the participant satisfactorily completes the treatment and follows all conditions imposed by the court, the judge will order to dismiss and close the case or cases, and the participant is considered to have graduated from Drug Court. According to the Judicial Power's website, the participant is acquitted from the case(s) referred to the Drug Court, and the Puerto Rico Police Bureau will return the photos and fingerprints associated with the dismissed case(s). In addition, if there are no prior convictions, the Puerto Rico Police Bureau may issue a negative criminal record certificate.<sup>2</sup>

### **Back to Law School**

After my summer internship in the District Attorney's Office, I started my second year at Law School. Classes started and I began to doubt how the legal system was "helping" people with severe addiction problems. I was confused about how on many occasions, one of the judges that

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<sup>2</sup> For more information: <https://poderjudicial.pr/eng/drug-courts/#:~:text=After%20the%20participant%20satisfactorily%20completes,%C2%ABgraduated%C2%BB%20from%20the%20program.>

oversaw the Drug Court was skeptical when one of the only rehabilitation programs available for the participants was *Hogar Crea*. Most Puerto Ricans can recall seeing men or women selling cakes and pastries at stoplights around the island. They usually wore a very bright neon shirt with *Hogar Crea*'s slogan and logo. I vividly remember seeing how a defense attorney told the judge that since that was the only option, they should send the participant there. The prosecutor who had the case had no objections to this. Later on, the participant was sent to *Hogar Crea*.

That year I was running the Criminal Law Pro Bono and organizing its activities. I met with our mentor, Dr. Iris Yaritza Rosario Nieves, and she proposed an activity about drug addiction in Puerto Rico and how the justice system treats people who suffer from drug addiction. I told her it was a great idea. The name of the activity was *Cotidianidad: una mirada desde la salud pública y el arte de sustancias controladas*.<sup>3</sup> (Everyday life: a view from public health and the art of controlled substances.)

The activity started by introducing the members of the panel, Dr. Iris Yaritza Rosario Nieves, Hermes Ayala, Carla Correa Cepeda, and Dr. Luis Román Badenas. Dr. Luis Román Badenas is a Clinical Psychologist who volunteers at *Intercambios Puerto Rico*, a nonprofit organization that advocates for the social integration of marginalized groups – particularly people with problematic drug use, homeless people, and sex workers – through service, education, advocacy, and research programs and activities. During this activity, they gave us a research article titled: *Humillación y abusos en centros de "tratamiento" para uso de drogas en Puerto Rico*. (Humiliation and abuse in "treatment" centers for drug use in Puerto Rico).

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<sup>3</sup> Upegui-Hernández, D.; Torruella, R.A. Humillaciones y abusos en centros de "tratamiento" para uso de drogas en Puerto Rico (Intercambios Puerto Rico: Puerto Rico, Mayo 2015).



The panel discussed the horrors that participants suffered during their time in *Hogar Crea*. It was horrifying having to listen to these experiences, I left with so many unanswered questions. I got home and started to read the research article, and I couldn't believe how our justice system lets an organization like *Hogar Crea* "help" Puerto Ricans who are struggling with substance abuse.

### **Humiliation and abuse in "treatment" centers for drug use in Puerto Rico**

The article started with a very eye-opening survey. A housing survey done in 2008 by the Administration of Mental Health and Anti-Addiction Services (ASSMCA, by its Spanish acronym), reported that at least 52,334 people met the criteria for substance abuse (not including alcohol) and that 59,322 had severe substance dependence. But something that didn't add up was that the report indicated that only 8.5% of the persons who met the criteria for substance abuse and 24% who had severe substance dependence had access to a treatment service specialized in the problematic use of narcotics (for example, hospitalization, detoxification, residential or outpatient programs, etc.). This means that at least 90% and 75% of the people who met the criteria of substance abuse and dependency in Puerto Rico never got access to any treatment.<sup>4</sup> In the article, they indicate that most of the facilities that provide treatment programs for substance abuse in Puerto Rico are focusing on abstinence and not giving proper treatment that is backed up by science.

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<sup>4</sup> *Id.* on page 4

They provided a chart that I believe is highly important to discuss in this article. The chart on the right breaks down the number of beds (spaces) in the different residential treatment programs for substance and/or alcohol abuse that are registered and that are allowed to provide these types of treatments according to the Administration of Mental Health and Anti-Addiction Services.<sup>5</sup>

**Tabla 1. Número aproximado de camas en centros de “tratamiento” residencial para sustancias y/o alcohol registrados en la Oficina de Licenciamiento de ASSMCA**

<b>Programas Residenciales</b>	<b>Total de Camas</b>	<b>Porcentaje</b>
<b>Gobierno (ASSMCA)</b>	<b>150</b>	<b>3.4%</b>
<b>Gobierno (Correcciones, Instituciones Juveniles y Familia)</b>	<b>503</b>	<b>11.3%</b>
<b>Privados (sin fines de lucro y/o base de fe)</b>	<b>1848</b>	<b>41.7%</b>
<b>Hogar CREA, Inc</b>	<b>1928</b>	<b>43.5 %</b>
<b>TOTALES</b>	<b>4429</b>	<b>100%</b>

It was shocking that the Government of Puerto Rico is responsible for 14.7% of the available spaces in these residential programs. This means that nearly 90% of the Drug Court Programs available in Puerto Rico are privately owned. These privately owned Drug Programs are centered around a community base and religious faith. The article points out that of the 132 residential programs that were registered in ASSMCA, at least 10 had no active licenses approved by ASSMCA and 5 of these programs had their licenses expired since 2011.<sup>6</sup>

*Hogar Crea* has always been problematic, but sadly they are still doing business with ASSMCA and providing “services” to participants who struggle with alcohol and/or substance abuse. *Hogar Crea* is a privately owned Drug Program that forms 44.7% of the available spaces mentioned in the chart above. Their program is based on religious faith (well known as a program

<sup>5</sup> *Id.* on page 5

<sup>6</sup> *Id.* on page 4

based on Christianity). This program is not based on scientific research or medicine, they focus on “therapeutic communities”, and their goal is “total abstinence through the re-education of the addict”. They don’t even differentiate the different levels of substance use -problematic or not- nor do they follow the Alcoholics Anonymous guidelines.

*Hogar Crea* uses worrisome techniques and practices to “rehabilitate” their participants. For example, the most famous and problematic ones are “confrontational therapy” and “therapy through representation and sales”. These practices can and should be considered a violation of their right to privacy, their right to receive adequate treatment based on science, and a violation of their rights of not receiving cruel and inhumane treatment.

For example, the article points out different experiences that past participants witnessed or had to go through while in the program. I would like to cite one that caught my attention. In 1993, Santiago Negrón described the type of practices that would go on at *Hogar Crea*:

*“... Desde exorcismos religiosos hasta castigos físicos y emocionales, tales como recortes de pelo poco convencionales, abuso verbal (la silla caliente), negación de la correspondencia y de visitas, uso de pañales desechables para adultos, y letreros ridiculizando la persona, entre otros. Ninguno de estos “tratamientos” tiene base científica; todos ellos salen de las especulaciones arbitrarias de un sinnúmero de paraprofesionales que se autodenominan “expertos” en el campo de la adicción a drogas. Muchos de estos “tratamientos” se practican como si fueran modas que luego se abandonan con la misma arbitrariedad que fueron instituidos (i.e., en*

*algunos programas se le pintaban las manos de negro al que sorprendieran masturbándose).”<sup>7</sup>*

<sup>8</sup> Another example that I remember seeing all the time when I was a little girl, and it was not until I started law school that I started to doubt it, was the “therapy through sales”. It was very common to see someone with a bright yellow t-shirt with *Hogar Crea*’s “motto” on the back selling cakes or asking for money at stop lights, beaches, public streets, etc. How is this therapeutic? How does this help someone struggling with drug and/or alcohol addiction? It is humiliating, plus they must wear a shirt that identifies the program they are in. What if they are not comfortable or ready to start sharing with the world that they have a substance abuse disorder?



### **Back to the Courtroom**

One day during my internship at the District Attorney’s Office, I was assigned to shadow a prosecutor in the Juvenile Court. One of the first cases of the day was via *Zoom* (video conference), and it was regarding a case in which the minor had failed various attempts at Drug Court. The hearing started and I remember that the parties (defense and prosecutor) were arguing about what

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<sup>7</sup> *Id.* on page 6

<sup>8</sup> The photo belongs to “Humiliation and abuse in “treatment” centers for drug use in Puerto Rico”.

they were going to do moving forward. The defense was arguing that the young boy should not be sent to prison due to his substance abuse and that he should be given adequate treatment for his disorder. Both parties argued if *Hogar Crea* should be considered as an option. The prosecutor argued that it was the last option left and that the minor should be sent there. The defense argued that *Hogar Crea* is a horrible place and that a child shouldn't be sent there, that there were other options. The judge agreed with the defense attorney and said that they should search for other options. It's shocking to hear how they wouldn't want a minor there, but in Adult Drug Court, they wouldn't even blink an eye to send an adult to *Hogar Crea*. As stated above, *Hogar Crea* to this day, has the most available spaces when it comes to Drug Court Programs. The program is anti-therapeutic, most of their locations don't have any doctors present and its usually past participants that are leading the new participants.

I then started to wonder if this was the type of defense attorney I wanted to be. I want to be a defense attorney who fights for my clients and for my future clients, therefore they can have the help they need and deserve.

For the second semester of my second year at Law School, Professor Oscar Miranda Miller was offering a one-credit mini-course about Controlled Substances. I registered for the class thinking it was going to be about the law that regulates controlled substances in Puerto Rico, but it was more eye-opening.

### **Articles Assigned in Class**

While I thought we were going to discuss Puerto Rico's Controlled Substances Law, Professor Miranda Miller assigned a book called: *Illegal Drug and Marijuana Law* by Alex Kreit.

This was a case book with various articles about different topics surrounding controlled substances. The Professor started the class by discussing Drug Courts in Puerto Rico and how they aren't rehabilitating or therapeutic in any way. He criticized places like *Hogar Crea* and how they are fomenting humiliation and using religion as their way to make their participants abstain from using drugs.

One of the first topics we discussed in class was the alternatives to prohibition and the decriminalization of drugs. According to Alex Kreit, there are alternatives to drug prohibition that stop short of legalization. Two policy options were adopted in other countries but that, to date, have not been tried in the United States: drug decriminalization and heroin-assisted treatment. These two policies are rooted in the theory of harm reduction, which focuses on reducing the harms associated with substance use.

Alex Kreit in his article *The Decriminalization Option: Should States Consider Moving from a Criminal to a Civil Drug Court Model?*<sup>9</sup>, was one of the first articles we had to read for the class, and it completely changed my point of view regarding the Drug Court System in Puerto Rico. He indicates that Drug Courts often require would-be participants to have either tested positive for drugs or to demonstrate that they suffer from an abuse problem to gain entry. Kreit later indicates that an individual can fake an abuse or addiction problem by incentives that tend to result in the admission of nonaddicts into drug court programs. He cites that “defendants understand that they have to play the treatment game to pass through the criminal loops”.

The article goes on by stating that Drug Courts generally have a very strong interest in admitting nonaddicted clients. This is because Drug Courts rely on contingent funding, implicitly

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<sup>9</sup> 2010 University of Chicago Legal Forum 299

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or explicitly, upon demonstrating results and treating a sufficient number of defendants. This means that many Drug Courts actively seek out “low risk” nonaddicted clients and do their best to “skim” high-risk clients away from their programs in order to boost their success rates.

When I read this part of the article, I was in utter shock. Drug Courts are leaving out the participants who need treatment to get more funding. How is this therapeutic? Why are we sending people who don't have substance abuse disorders to these centers? They are just taking a spot away from someone who needs it, and the courts are letting this happen. Kreit indicates that these individuals are gaming the system and entering treatment not because they have any need for it but because it is a preferable alternative to the punishment they would otherwise receive.

In his article, Kreit makes a good point that I would like to highlight. He states that because Drug Courts are located within the criminal system, they put individuals who are caught in possession of drugs to a choice between a drug court treatment program and the criminal penalty. In some cases, this choice will lead defendants who do not have a drug abuse problem and are unlikely to develop one to obtain treatment they do not need to avoid the punishment they would otherwise face. In other, defendants who might benefit from a detailed course of treatment or a brief medical consultation about their substance use are counseled by their attorneys not to enter drug court programs because the punishment they face does not justify the risks or burdens of drug court. As a result, Drug Courts can, in some instances, waste scarce treatment resources on those without drug problems while allowing others who truly need treatment to pass through the system without so much as speaking with a treatment or addiction specialist.

## **Portugal's Civil Drug Court and How Can It Improve the Way We See Drug Courts in Puerto Rico**

While in Puerto Rico we still see drug use as a criminal offense, Portugal has decided to go another route, and it has changed the way the world should think about Drug Courts. Alex Kreit in his article *The Decriminalization Option: Should States Consider Moving from a Criminal to a Civil Drug Court Model?*<sup>210</sup> explains in detail how the Civil Drug Courts in Portugal work. This is one of the most therapeutic ways of managing Drug Courts.

Portugal implemented a “decriminalization model” for drug users. The law Portugal passed removes criminal penalties for the purchase, possession, and cultivation of all drugs for personal-use quantities. Kreit indicates that rather than receiving no penalty or being given a fine, individuals who are found in possession of personal-use quantities of drugs are referred to a civil drug court. What is a civil drug court? When a person is caught with drugs, the police officer will give them a citation to appear in front of a “dissuasion panel”.

According to Kreit dissuasion panels are organized to be as non-adversarial as possible. They are made up of three members, two from the medical or social services field and an attorney. Something that caught my attention when reading this article was that the panel is structured to try and foster a supportive environment that is focused exclusively on the health of the offender. Moreover, Kreit indicates that every effort is made to guard against creating an impression that the panels are there to assess guilt or that drug usage is morally blameworthy conduct. An example of this is, when the members of the panel sit at a table with the offender, as opposed to behind an elevated bench as we usually see in a regular courtroom. This article reflects how the Drug Court

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<sup>10</sup> 2010 University of Chicago Legal Forum 299



should be. This is a more therapeutic way of approaching cases that involve people with substance abuse disorders.

### **Professional Identity Formation/Conclusion**

As a law student, one semester away from graduating, I have tried my best to make people listen to the horrors that I have witnessed in Drug Court. It is also important that law schools provide classes and spaces for students to learn about the injustices in our justice system. For this paper, my goal was to share my experiences as a first-generation law student learning and experiencing how anti-therapeutic Drug Courts are.

As Professor David B. Wexler states in his article *Guiding Court Conversation Along Pathways Conducive Rehabilitation: Integrating Procedural Justice and Therapeutic Jurisprudence*<sup>11</sup>, the emphasis of TJ is understanding the impact and consequences of the law, legal process, and legal actors on the well-being of persons affected by the law. Moreover, the primary goal of TJ is to apply and incorporate insights and findings from the psychology, criminology, and social work literature into the legal system. The field of procedural justice teaches that people appearing in court experience greater satisfaction and comply more willingly with court orders when they are given a sense of voice and validation and treated with dignity and respect.<sup>12</sup> This is why it is important to acknowledge when the system isn't working.

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<sup>11</sup> David B. Wexler, *Guiding Court Conversation Along Pathways Conducive to Rehabilitation: Integrating Procedural Justice and Therapeutic Jurisprudence*, 1 *International Journal of Therapeutic Jurisprudence* 367 (2016), available online at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2677431](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2677431).

<sup>12</sup> David B. Wexler, *New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence 'Code' of Proposed Criminal Processes and Practices*, 7 *ARIZ. SUMMIT L. REV.* 463 (2014), available online at <http://ssrn.com/abstract=2065454>

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As a future defense attorney, I want to be a lawyer who can be the voice of those who feel lost in the system. I can be someone who fights for justice and brings to light that places like *Hogar Crea* have no place in our justice system and the government of Puerto Rico nor the Judicial Power should be giving them access to Drug Court participants.