

A Statutory Proposal for the Expedited Development of Iowa’s Treatment Courts

Jacob R. Wendell*

ABSTRACT: Treatment courts are an alternative to incarceration that focus on the rehabilitation of defendants suffering from substance addiction by utilizing the concept of therapeutic jurisprudence. Treatment courts have been studied extensively and were found to reduce recidivism and produce net cost-savings when compared to traditional incarceration. Iowa’s treatment court system has developed through the grassroots efforts of individual judges and their teams utilizing federal grant money. However, the state has failed to provide adequate funding to allow treatment courts to evolve and come into compliance with evidence-based best practice standards. This Note argues that Iowa must adopt treatment court legislation that encourages the proliferation of treatment courts, creates a judicial branch committee to ensure that treatment courts are compliant with best practice standards, and funds treatment courts directly through the Judicial Branch, rather than through each district’s department of corrections. Funding for such a bill could be sourced from the \$174 million settlement that will be paid to the state by opioid producers and distributors.

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* J.D. Candidate, The University of Iowa College of Law, 2025; B.A., Economics and Philosophy, The University of Iowa College of Liberal Arts and Sciences, 2022.

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INTRODUCTION

Treatment courts, sometimes referred to as specialty courts,¹ problem-solving courts,² or collaborative justice courts,³ are specialized court dockets that operate as alternatives to incarceration for individuals with substance abuse and mental health disorders.⁴ Treatment courts keep offenders out of prison and instead focus on treating the underlying issues that cause criminal behavior.⁵ Iowa's treatment courts primarily developed through local grassroots efforts.⁶ Judges and multidisciplinary teams of treatment professionals noticed a missing link in their communities' justice systems and decided to take action.⁷

These early treatment courts, almost exclusively adult drug treatment courts,⁸ were initially funded by federal grants from the Department of Justice

1. See IOWA JUD. BRANCH, IOWA SPECIALTY COURTS, https://www.iowacourts.gov/static/media/cms/Iowa_Specialty_Courts_543BA08E1647D.pdf [<https://perma.cc/8GA3-LAMC>].

2. See *Problem-Solving Courts*, NAT'L INST. JUST., U.S. DEP'T JUST. (Feb. 20, 2020), <https://nij.ojp.gov/topics/articles/problem-solving-courts> [<https://perma.cc/5LCJ-UEFM>] (using the term "problem-solving court").

3. See *Collaborative Justice Courts*, CAL. CTS., <https://www.courts.ca.gov/programs-collabjustice.htm> [<https://perma.cc/S7T5-VFS6>] (using the term "Collaborative Justice Courts").

4. *Treatment Courts Continue to Help Communities*, BUREAU JUST. ASSISTANCE, U.S. DEP'T JUST. (Dec. 20, 2022), <https://bja.ojp.gov/news/blog/treatment-courts-continue-help-communities> [<https://perma.cc/ZX77-UTBX>].

5. See BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST., NCJ 205621, *DEFINING DRUG COURTS: THE KEY COMPONENTS 1* (2004), <https://www.ojp.gov/pdffiles1/bja/205621.pdf> [<https://perma.cc/3Z68-T9AE>].

6. COURTNEY E. BROSCIOUS, MICHELLE CERN & KATHRYN J. GENTHON, NAT'L CTR. STATE CTS., *NEEDS ASSESSMENT FOR IOWA SPECIALTY TREATMENT COURTS 5* (2019), <https://www.legis.iowa.gov/docs/publications/DF/1033936.pdf> [<https://perma.cc/AUD4-R8M7>].

7. See *id.*

8. Compare FRED L. CHEESMAN II & OLIVIA LYLES, NAT'L CTR. STATE CTS., *THE STATE OF SPECIALTY TREATMENT COURTS IN IOWA: OPPORTUNITES [sic] FOR ENHANCEMENT AND SUGGESTIONS*

and the Office of Drug Control Policy.⁹ When these initial grants ran out or proved to be insufficient, the state stepped in and began funding some drug courts through state general fund appropriations and State Healthy Iowans Tobacco Trust appropriations.¹⁰ However, this funding was routed to only *drug* treatment courts¹¹ through each district's department of corrections, creating a system of incohesion and uncertainty.¹² Ultimately, budget constraints forced the Judicial Branch to impose an official moratorium on the expansion of treatment courts in early 2017.¹³

This Note examines the current state of treatment courts in Iowa and offers a legislative solution to the many problems they face. This Note begins by laying out the history of treatment courts, starting from their initial mission of addressing the crack cocaine epidemic in Miami, to their current expansion into a growing number of treatment prerogatives. Next, this Note addresses the theory of therapeutic jurisprudence underlying the treatment court movement and explains the present consensus on evidence-based best practice standards. This Note then narrows in on problems regarding compliance with best practice standards in Iowa's treatment courts. Finally, this Note discusses the Judicial Branch's efforts to improve treatment courts and develops a treatment court statute that would expedite the development of Iowa's treatment courts, thereby expanding access to justice for vulnerable populations suffering from addiction.

I. THE DEVELOPMENT OF THE MODERN TREATMENT COURT

To understand treatment courts as they exist today, it is necessary to look back to their inception and the problems that they were created to ameliorate. This Section begins by analyzing the history of treatment courts from their initial focus on drug addiction to the broader forms they take on today. Next, this Section discusses the theoretical underpinnings of treatment courts to better understand the role they play in our legal system. Finally, this Section

FOR RESEARCH 12 (2018) (explaining that the federal grant establishing the first family dependency treatment courts covered 2007–2012), *with* FISCAL SERVS. DIV., IOWA LEGIS. SERVS. AGENCY, ISSUE REVIEW: COST-BENEFIT ANALYSIS OF ADULT DRUG COURTS 2 (Jan. 7, 2014), <https://www.legis.iowa.gov/docs/publications/IR/24325.pdf> [<https://perma.cc/HA5T-GYSB>] (“Adult Drug Court funding first started in Iowa in 1995 . . .”). Family dependency courts and adult drug courts are by far the most common types of treatment courts in Iowa. *See* CHEESMAN II & LYLES, *supra*, at 3 (graphing Iowa's treatment court types and displaying that fifty-seven percent are either adult drug or family dependency courts).

9. *See* FISCAL SERVS. DIV., *supra* note 8.

10. *Id.* at 3.

11. *See* Justice System Appropriation Bill, S. File 562, 90th Gen. Assemb., Reg. Sess. 9–10 (Iowa 2023) (enacted) (providing funding specifically for drug courts).

12. *See infra* notes 173–81 and accompanying text.

13. BROSCIOUS ET AL., *supra* note 6, at 5.

concludes with a concrete discussion of modern best practice standards to illustrate how contemporary treatment courts ought to function.

A. *HISTORY OF TREATMENT COURTS IN THE UNITED STATES*

Treatment courts can be traced back to the height of the crack epidemic.¹⁴ “In 1989, Florida’s Eleventh Judicial Circuit [established] a court-based drug abuse treatment approach,” colloquially termed a “drug court.”¹⁵ The Miami court was established in response to the massive increase in case-load pressures stemming from the then-booming illicit trade of cocaine.¹⁶ Between 1985 and 1989, overall adult arrests in Dade County increased by forty-five percent, and arrests for drug possession increased by an astounding ninety-three percent.¹⁷ These radically changing circumstances called for a new way of thinking about how the system adjudicated drug-related crime.¹⁸ Instead of utilizing deterrence and incapacitation strategies such as preventive detention and mandatory minimum sentences, the court decided to target the demand for drugs through treatment programs.¹⁹

Other courts in Chicago, Milwaukee, Philadelphia, Los Angeles, and Detroit had already created specialized dockets for drug crimes.²⁰ However, those courts focused on speeding up processing times for defendants accused of drug crimes.²¹ Contrarily, the Miami court hoped that, through supervised drug treatment programs, persons with substance use disorder would be given

14. James A. Inciardi, *Crack-Cocaine in Miami*, in *THE EPIDEMIOLOGY OF COCAINE USE AND ABUSE* 263, 273 (Susan Schober & Charles Schade eds., 1991) (describing the timeline of crack cocaine usage in Miami, Florida).

15. JOHN S. GOLDKAMP & DORIS WEILAND, *CRIME & JUST. RSCH. INST., ASSESSING THE IMPACT OF DADE COUNTY’S FELONY DRUG COURT 2* (1993), <https://www.ojp.gov/pdffiles1/Digitization/147999NCJRS.pdf> [<https://perma.cc/7YP9-AK6C>].

16. *Id.* at 3 (“The pervasive impact of drug-involved offenders on the criminal caseload in Dade County was illustrated by a study of 1987 felony defendants which found that approximately [seventy-three] percent of entering felony defendants tested positively for cocaine and that at least [eighty-three] percent could in some way be classified as ‘drug-related.’”) (citing John S. Goldkamp, Michael R. Gottfredson & Doris Weiland, *Pretrial Drug Testing and Defendant Risk*, 81 *J. CRIM. L. & CRIMINOLOGY*, 585, 607 (1990); JOHN S. GOLDKAMP, PETER R. JONES, MICHAEL R. GOTTFREDSON & DORIS WEILAND, 3 *ASSESSING THE IMPACT OF DRUG-RELATED CRIMINAL CASES ON THE JUDICIAL PROCESSING OF CRIMINAL CASES, CROWDING AND PUBLIC SAFETY: SUMMARY AND IMPLICATIONS* (1990)).

17. *Id.*

18. *See id.* at 1–2 (describing the increase in drug arrests and its impact on the justice system’s ability to deal with violent crime and other serious offenses).

19. *See id.* at 2 (describing the popularity and prevailing usage of deterrent, incapacitative, and punitive strategies).

20. Arthur J. Lurigio, *The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact*, *FED. PROBATION*, June 2008, at 13, 14.

21. *Id.* (describing the results of the specialized docket as “assembly line justice”).

the tools necessary to prevent relapse, significantly reducing their likelihood of reoffending and recidivating.²² To achieve these goals, the Miami court built its program on the foundation of two core pillars: emphasizing the role of officials in the courtroom and implementing a specialized program of outpatient drug abuse treatment.²³

The courtroom of the Miami Drug Court, and the role of the presiding judge, were both drastically different than their counterparts in normal criminal proceedings.²⁴ In each session, the judge would oversee a number of brief hearings, each concerning a participant in the program.²⁵ Each participant would report on their progress, with defense counsel and the prosecution providing additional information as necessary.²⁶ Participants who had successfully adhered to the program's requirements received verbal encouragement and praise from the judge, while those who had been noncompliant were required to explain themselves and potentially face sanctions; in some cases, these sanctions were short terms of incarceration, also dubbed "motivational jail."²⁷ Additionally, the proceedings in the Miami Drug Court were nonadversarial, with court personnel expected to operate in team-oriented roles designed to support the judge.²⁸ Prosecutors offered encouragement to those who were doing well in the program and suggested reprimands for those who were not. Defense attorneys expressed appreciation at the opportunity to be in drug court and occupied a role more therapeutic than adversarial.²⁹ Participants further bolstered this community-type atmosphere by spectating the hearings of their peers—observing their successes and failures.³⁰ All of this contributed to an environment where participants felt that the system was designed to be healing rather than punitive.³¹

The Miami drug abuse treatment program required defendants to participate for a minimum of one year and complete three successive phases: detoxification, counseling, and educational/vocational assessment and training.³² In the detoxification phase, participants were required to take

22. See GOLDKAMP & WEILAND, *supra* note 15, at 3–4.

23. *Id.* at 3.

24. *Id.*

25. *Id.* at 3–4.

26. See *id.* at 4 (discussing the roles of the judicial officers that make up a treatment court's staff).

27. *Id.*

28. *Id.* at 5.

29. *Id.*

30. *Id.* at 6.

31. See Lurigio, *supra* note 20, at 15 ("Defendants [were] neither prosecuted nor punished for their substance use problems. Instead, the court provides . . . services that help them achieve sobriety and stability in their lives.").

32. See GOLDKAMP & WEILAND, *supra* note 15, at 7.

daily drug tests until they received seven consecutive negative results.³³ During the counseling phase, the participant engaged in treatment for their substance abuse problem, and the drug testing frequency decreased to two or three times per week.³⁴ In the final phase, “attendance requirements [either] continue[d] to be the same or [were] relaxed somewhat, given a client’s progress and work schedule or school obligations.”³⁵ If a participant failed to show up to appointments three consecutive times, a thirty-day countdown began, and if the participant did not appear during that time, they were removed from the program. If a participant reentered the program after a thirty-day absence, they were required to start over again from the first phase.³⁶ Thus, the program demonstrated its strong commitment to rehabilitation through a measured level of leniency uncommon in the unyielding world of the law.³⁷ This leniency was absolutely necessary, as people with substance-use disorders take an average of five serious recovery attempts before overcoming their disorder.³⁸

The results of the Miami Drug Court were difficult to measure, but generally positive, with around sixty percent of participants achieving favorable outcomes.³⁹ It is important to remember that each favorable outcome—147 from August to September of 1990—represents a human being who was treated for their substance abuse problem instead of being imprisoned.⁴⁰ This court achieved these numbers despite being the first court of its kind and having no standardized guidance to follow.⁴¹

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. See Lurigio, *supra* note 20, at 14 (defining “therapeutic jurisprudence” as “a perspective or paradigm that guides court interventions for the purpose of improving clients’ lives,” and describing the Miami court’s practice of the philosophy).

38. John F. Kelly, Martha Claire Greene, Brandon G. Bergman, William L. White & Bettina B. Hoepfner, *How Many Recovery Attempts Does It Take to Successfully Resolve an Alcohol or Drug Problem? Estimates and Correlates From a National Study of Recovering U.S. Adults*, 43 ALCOHOLISM: CLINICAL & EXPERIMENTAL RSCH. 1533, 1536 (2019).

39. See GOLDKAMP & WEILAND, *supra* note 15, at 20–23 (“Measurement of program outcomes is problematic in part because there are a number of ways to measure ‘success,’ all of which could be considered valid depending on the perspective adopted.”). A look at the qualities of individual cases illustrates the difficulties inherent in conveying treatment court success in purely quantitative terms. See *id.* at 25–33 (listing cases).

40. See *id.* at 5 (“The priority [was] given to defendants’ treatment progress . . .”).

41. See Lurigio, *supra* note 20, at 14–15.

The success of the Miami court led to the proliferation of other drug treatment courts across the country throughout the 1990s and into the 2000s.⁴² The court's structure became the blueprint for the Bureau of Justice Assistance's *Defining Drug Courts: The Key Components*, a work originally published in 1997,⁴³ that became the foundational text for standardizing the development of drug treatment courts.⁴⁴

Defining Drug Courts: The Key Components lists ten components necessary to the successful operation of a drug treatment court: (1) integrating "alcohol and other drug treatment services with justice system case processing," (2) a nonadversarial approach between prosecution and defense counsel, (3) early identification of eligible participants, (4) providing a continuum of alcohol and other drug ("AOD") related treatment and rehabilitation, (5) frequent AOD testing to monitor abstinence, (6) coordinated responses to participant compliance or noncompliance, (7) "[o]ngoing judicial interaction with each drug court participant," (8) coordinated monitoring and evaluation to gauge program effectiveness, (9) continuing interdisciplinary education for drug court staff, and (10) generating local support through cooperation with public agencies and community-based organizations.⁴⁵ Each of these key components includes a list of "[p]erformance [b]enchmarks" that developing courts could use to assess their progress towards total compliance with the best available standards at the time.⁴⁶

Federal grants further bolstered the rapid proliferation of drug treatment courts. In 1994, the Violent Crime Control and Law Enforcement Act "authorized the Attorney General to make grants . . . to establish treatment courts[, and in] 1995 the [Department of Justice] established the Drug Court Discretionary Grant Program."⁴⁷ The Drug Court Discretionary Grant Program is administered by the Bureau of Justice Assistance and provides grants to "states, state courts, local courts, units of local government, and

42. See *id.* at 16 ("In 1997, more than 370 drug courts were operational or being planned in the United States By April 2007, more than 1,000 specialized drug courts were operational in all [fifty] states as well as the District of Columbia, Guam, and Puerto Rico.").

43. See generally BUREAU OF JUST. ASSISTANCE, *supra* note 5; *Treatment Courts Continue to Help Communities*, *supra* note 4 (laying out the goals and effective methods for the administration of drug treatment courts in a similar way to the Miami court).

44. See generally *Treatment Courts Continue to Help Communities*, *supra* note 4 (laying out the goals and effective methods for the administration of drug treatment courts in a similar way to the Miami court).

45. BUREAU OF JUST. ASSISTANCE, *supra* note 5, at iii.

46. *Id.* at 1–2.

47. *Adult Treatment Court Program*, BUREAU JUST. ASSISTANCE, U.S. DEP'T JUST. (Mar. 9, 2023), <https://bja.ojp.gov/program/adult-treatment-court-program/overview> [https://perma.cc/J84W-YHXU].

federally recognized Indian tribal governments to establish treatment courts.”⁴⁸ Between fiscal years 2002 and 2005, the Grant Program awarded 230 grants worth approximately seventy-seven million dollars.⁴⁹ Congress’s intent to fund well-organized drug treatment courts that follow best practice standards is illustrated by the statute’s requirements of continual supervision of nonviolent offenders, substance abuse treatment that requires periodic testing for AOD, and the imposition of “graduated sanctions that increase punitive measures, therapeutic measures, or both whenever a participant fails a drug test.”⁵⁰ In summation, the treatment court movement began with the success of the Miami Drug Treatment Court. This success prompted efforts to standardize treatment courts through the publication of key components and benchmarks and federal grants. This answers the practical question of *how* treatment courts came into existence. It is also necessary, however, to comprehend *why* treatment courts are a desirable adjudicatory method within contemporary American jurisprudence.

B. THE THEORETICAL UNDERPINNINGS OF TREATMENT COURTS

The United States has a serious and ongoing mass incarceration problem. The “land of the free” is home to a staggering two million incarcerated persons.⁵¹ That number balloons to more than five and a half million people when including those the U.S. justice system controls through probation and parole.⁵² The incarceration rate in the United States, 664 per 100,000, is

48. *Id.*; see also *FY24 Adult Treatment Court Program*, BUREAU JUST. ASSISTANCE, U.S. DEP’T JUST. (Feb. 7, 2024), <https://bja.ojp.gov/funding/opportunities/o-bja-2024-171972> [<https://perma.cc/GA9W-EGJD>].

49. See *FY 2002 Drug Court Grants*, OFF. JUST. PROGRAMS, U.S. DEP’T JUST., <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/02drugcourtgrants.pdf> [<https://perma.cc/P6WK-ZH2F>] (displaying 2002 statistics); *FY 2004 Drug Court Awards*, OFF. JUST. PROGRAMS, U.S. DEP’T JUST., <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/04drugctawd.pdf> [<https://perma.cc/9FWD-TASU>] (displaying 2004 statistics); Press Release, Off. of Just. Programs, U.S. Dep’t of Just., Department of Justice Awards More than \$25 Million to Communities Nationwide for Drug Courts (Sept. 22, 2005), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/05drugctawards.pdf> [<https://perma.cc/R5QL-PQSN>] (displaying 2005 statistics). Data for fiscal year 2003 are not listed. See *Archives: Grant Awards*, BUREAU JUST. ASSISTANCE, U.S. DEP’T JUST. (May 10, 2024), <https://bja.ojp.gov/program/adult-treatment-court-program/archives> [<https://perma.cc/AQM4-ZS56>].

50. 34 U.S.C. § 10611 (2018).

51. Press Release, Wendy Sawyer & Peter Wagner, Prison Pol’y Initiative, Mass Incarceration: The Whole Pie 2023 (Mar. 14, 2023), <https://www.prisonpolicy.org/reports/pie2023.html> [<https://perma.cc/C5PK-M9C6>].

52. *Id.* (“[F]ederal, state, local, and tribal [criminal justice] systems . . . hold almost 2 million people . . . There are another 803,000 people on parole and a staggering 2.9 million people on probation.”).

the highest in the world.⁵³ The United States easily surpasses the rates of the next four highest countries—El Salvador, Turkmenistan, Rwanda, and Cuba—by over 100 people per 100,000 population, and more than doubles the incarceration rate of the Russian Federation.⁵⁴ This Section begins by exploring the “tough on crime” political rhetoric of the 1970s and 80s and its effect on U.S. prison populations. Next, this Section explores alternatives to this damaging rhetoric and introduces the concept of therapeutic jurisprudence. Finally, this Section describes the application of therapeutic jurisprudence in the treatment court setting.

1. America’s “Tough on Crime” Past

The problem of mass incarceration has its roots in the “tough on crime” political rhetoric of the 1970s and 80s.⁵⁵ In 1971, President Richard Nixon infamously declared a “war on drugs,”⁵⁶ however it was not until over a decade later that President Ronald Reagan took up arms to wage that war.⁵⁷ In 1984, Reagan signed the Comprehensive Crime Control Act, increasing federal penalties for marijuana-related offenses,⁵⁸ limiting judicial discretion by imposing mandatory minimum sentences,⁵⁹ and abolishing parole for federal prisoners.⁶⁰ The Reagan Administration preached a policy of “law and order” that emphasized “tough punishments, an unimpeded police and legal system,

53. Emily Widra & Tiana Herring, *States of Incarceration: The Global Context 2021*, PRISON POL’Y INITIATIVE (Sept. 2021), <https://www.prisonpolicy.org/global/2021.html> [<https://perma.cc/TU9Z-6TQR>].

54. *See id.* (charting the incarceration rates per 100,000 of the United States (664) alongside El Salvador (562), Turkmenistan (552), Rwanda (515), Cuba (510), and the Russian Federation (329)).

55. James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration> [<https://perma.cc/B4BA-QHTA>].

56. Richard Nixon Found., *President Nixon Declares Drug Abuse “Public Enemy Number One”*, YOUTUBE (Apr. 29, 2016), <https://www.youtube.com/watch?v=y8TGLLQID9M> [<https://perma.cc/2EJX-CYQE>].

57. *See* Cullen, *supra* note 55 (“[T]he prison population truly exploded during President Ronald Reagan’s administration.”).

58. *See* Comprehensive Crime Control Act of 1984, ch. 5 pt. A, Pub. L. No. 98-473, 98 Stat. 1837.

59. *See* Sentencing Reform Act of 1984, ch. 227, subchapter A, Pub. L. No. 98-473, 98 Stat. 1988 (existing within the broader “Comprehensive Crime Control Act”).

60. ISAAC FULWOOD, U.S. PAROLE COMM’N, U.S. DEP’T OF JUST., HISTORY OF THE FEDERAL PAROLE SYSTEM 26 (2003), <https://www.justice.gov/sites/default/files/uspc/legacy/2009/10/07/history.pdf> [<https://perma.cc/VZE6-KWEC>] (“[The Comprehensive Crime Control Act of 1984] provided for the creation of a United States Sentencing Commission to promulgate explicit decision guidelines The Parole Commission was to be abolished five years from the date the sentencing guidelines took effect.”).

the death penalty, and a rejection of social programs.”⁶¹ The rhetoric of “law and order” was the zeitgeist of Reagan’s politically popular two terms in office, and reflected “a bipartisan consensus in Congress during the 1980s.”⁶²

Reagan’s agenda caused the total prison population to approximately double from roughly 329,000 people to 627,000 people in only eight years.⁶³ The increase disproportionately affected Black Americans due to drug enforcement policies that created irrationally vast sentencing disparities between crack cocaine and other drugs more commonly associated with white people.⁶⁴ “Evoking racist imagery about the ‘dangerous classes’ and Cold-War fears about the destruction of ‘civilized society,’ the advocates of ‘law and order’ [] promoted an ideology that focuse[d] on working-class crime and mystifie[d] the causes of crime.”⁶⁵ This punitive criminal justice ideology destroyed countless lives and cost taxpayers billions of dollars by unnecessarily imprisoning perpetrators of low-level drug crimes.⁶⁶ A change towards a more humanistic and rehabilitative approach has been—and still is—necessary.

61. Tony Platt, *U.S. Criminal Justice in the Reagan Era: An Assessment*, 29 CRIME & SOC. JUST. 58, 67 (1987).

62. *Id.*

63. Compare BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., BULLETIN: PRISONERS IN 1980 1 (1981), <https://bjs.ojp.gov/content/pub/pdf/p80.pdf> [<https://perma.cc/5ZJ4-6QUL>] (reporting statistics from 1980), with BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., BULLETIN: PRISONERS IN 1988 1 (1989), <https://bjs.ojp.gov/content/pub/pdf/p88.pdf> [<https://perma.cc/S3E2-GCPW>] (reporting statistics from 1988).

64. See Platt, *supra* note 61, at 61 (describing the growth of “imprisoned black and brown populations,” and the entrenchment of institutionalized racism in the 1980s); see also DEBORAH J. VAGINS & JESSELYN MCCURDY, ACLU, CRACKS IN THE SYSTEM: TWENTY YEARS OF UNJUST FEDERAL CRACK COCAINE LAW i (2006), <https://www.aclu.org/documents/cracks-system-20-years-unjust-federal-crack-cocaine-law> [<https://perma.cc/RF8A-7UZ2>] (describing the 1986 imposition of a one hundred to one sentencing disparity between crack and powder cocaine, as well as its disparate application to Black Americans who “comprise the vast majority of those convicted of crack cocaine offense . . . despite the fact that whites and Hispanics form the majority of crack users”).

65. Platt, *supra* note 61, at 67 (quoting a *New York Times* article written by Robert Pear).

66. See Cullen, *supra* note 55 (charting the growth of the American prison system from 1950–2016); ACLU, AT AMERICA’S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY ii (2012), https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf [<https://perma.cc/U55S-JPK7>] (finding that “it costs \$34,135 per year to house an average prisoner [and] \$68,270 per year to house a prisoner age 50 and older”); STEVE OLSON & KAREN M. ANDERSON, THE NAT’L ACADS. OF SCIS. ENG’G MED., THE EFFECTS OF INCARCERATION AND REENTRY ON COMMUNITY HEALTH AND WELL-BEING: PROCEEDINGS OF A WORKSHOP 14 (2020), <https://www.ncbi.nlm.nih.gov/books/NBK555719> [<https://perma.cc/U4PB-PWAD>] (“Children exposed to parental incarceration have an increased likelihood of long-term negative outcomes, including depression, anxiety, withdrawal, difficulties forming healthy relationships, aggressive behaviors, substance use, developmental delays, and academic difficulties.”).

2. Alternatives to the “Tough on Crime” Approach

The punitive, retributive theory of criminal punishment exemplified by the “law and order” movement has resulted in the overwhelming growth of America’s prison population.⁶⁷ Rehabilitative theories of criminal justice, on the other hand, focus on rehabilitating defendants to avoid recidivism. Where the “law and order” movement “mystifies the causes of crime,”⁶⁸ rehabilitative jurisprudence attempts to illuminate and address the underlying causes of criminal behavior so that people who commit crimes can be safely reintegrated into society.⁶⁹ Treatment courts are expressly rehabilitative. Treatment courts substitute incarceration with programs that treat the underlying causes of crime through therapy, drug addiction treatment, or family counseling.⁷⁰ They are designed to treat each defendant as an individual with unique problems, rather than prescribing the one-size-fits-all “solution” of prison.⁷¹

Treatment courts, however, are just one of many alternatives to incarceration that have been recommended by prison reform groups to relieve America’s mass incarceration problem. These alternatives include probation, halfway houses, electronic monitoring, fines and restitution, boot camps, and even public shaming.⁷² Of these alternatives, smart probation strategies such as Hawaii’s Opportunity Probation with Enforcement (“HOPE”) program have shown promising results.⁷³ HOPE drastically improved outcomes for its participants when compared to traditional probation programs by focusing on immediate and consistent consequences for probation violations, only

67. ACLU, OVERCROWDING AND OVERUSE OF IMPRISONMENT IN THE UNITED STATES 1 (2015), <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf> [<https://perma.cc/LES5-DDRE>] (“Existing facilities have been overcrowded far beyond capacity, with prisoners sleeping in gyms and hallways or triple- and quadruple-bunked in cells.”).

68. Platt, *supra* note 61, at 67.

69. See MARY BOSWORTH, ENCYCLOPEDIA OF PRISONS AND CORRECTIONAL FACILITIES 831 (2005) (describing rehabilitation theory and briefly discussing the history of methods used to rehabilitate prisoners).

70. See NAT’L ASS’N OF DRUG CT. PROS., ADULT DRUG COURT: BEST PRACTICE STANDARDS VOLUME I 38–39 (2013), <https://allrise.org/wp-content/uploads/2023/06/Adult-Drug-Court-Best-Practice-Standards-Volume-I-Text-Revision-December-2018.pdf> [<https://perma.cc/W2UK-ZT5G>] (describing how treatment courts provide a continuum of care using evidence-based treatments).

71. *Id.*

72. See generally *Alternatives to Incarceration in a Nutshell*, FAMS. AGAINST MANDATORY MINIMUMS (July 8, 2011), <https://famm.org/wp-content/uploads/2018/04/FS-Alternatives-in-a-Nutshell.pdf> [<https://perma.cc/GJY3-5KVD>] (listing alternatives to incarceration and providing a brief description of each).

73. *Alternatives to Incarceration: A Smart Approach to Breaking the Cycle of Drug Use and Crime*, OFF. NAT’L DRUG CONTROL POL’Y, WHITE HOUSE (Aug. 2011), <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/alternatives-to-incarceration> [<https://perma.cc/WL75-T3FJ>].

mandating drug treatment for probationers who continue to test positive for drug use, and having employed probationers serve jail time on weekends. HOPE participants were “[fifty-five] percent less likely to be arrested for a new crime; [seventy-two] percent less likely to use drugs; [sixty-one] percent less likely to skip appointments with their supervisory officer; and [fifty-three] percent less likely to have their probation revoked.”⁷⁴

While programs such as HOPE are certainly useful tools to address mass incarceration, treatment courts still have a vital role to play in eliminating the problem. Treatment courts are unique among alternatives to incarceration because they specifically target high-risk, high-need individuals who would be facing incarceration if not for the intervention of a treatment court program.⁷⁵ This feature separates treatment courts from probation programs like HOPE that, by definition, involve people whom the system has deemed ready for release, whether as an initial punishment, or after the partial completion of a term of incarceration. Additionally, treatment courts adhere to principles of therapeutic jurisprudence.⁷⁶ This feature represents an innovative way of viewing the role of law in a defendant’s life that is most effectively channeled through the treatment court setting.

3. Therapeutic Jurisprudence in the Treatment Court Setting

Therapeutic jurisprudence posits that the law, both in its abstract effects⁷⁷ and in its concrete practice within a courtroom,⁷⁸ is a social force that has an impact on one’s emotional and psychological well-being.⁷⁹ David Wexler, a law professor who pioneered the idea of therapeutic jurisprudence, divides the law into three categories for examination under his theory: legal rules,

74. *Id.*

75. Iowa’s statewide treatment court coordinator described the “risk” factor as pertaining to the risk of failing to succeed under one’s current level of supervision, as opposed to the risk posed to public safety. In the Balance Podcast, *Episode 34: Iowa’s Treatment Courts with Richard Gordon*, IOWA JUD. BRANCH (July 25, 2023, 12:00 AM), <https://www.iowacourts.gov/for-the-public/in-the-balance-podcast/2023/07/25/episode-34-iowas-treatment-courts-with-richard-gordon> [https://perma.cc/UZY2-5MCM]. He also described that the “need” factor refers to one’s access to social supports. *Id.*

76. Lurigio, *supra* note 20, at 14–15.

77. See David Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125, 126 (“One of the things that therapeutic jurisprudence does [] is to tease out some of the more subtle, more unintended consequences of legal rules that may be antitherapeutic. An interesting study of the ‘Don’t Ask, Don’t Tell’ rule suggested that if someone is gay in the military and cannot talk about that, then that person may *also* be afraid to talk about many other things as well because those *other* things are likely to raise the question of the legally prohibited topic.”).

78. See *id.* (“Much of what legal actors do has an impact on the psychological well-being or emotional life of persons affected by the law. I refer here, for example, to matters such as the dialogue that judges have with defendants or that lawyers have with clients.”).

79. *Id.* at 125.

legal procedures, and the roles of legal actors.⁸⁰ In the treatment court context, therapeutic jurisprudence's understanding of legal procedures and the roles of legal actors are indispensable. The legal procedure of treatment courts is designed to avoid the antitherapeutic effects of an adversarial trial.⁸¹ As discussed in the Miami Drug Courts, the roles of the judge, prosecutor, and defense attorney are transformed so that the three operate as a team.⁸² In the defendant's eyes, there is no "bad-guy prosecutor" taking every opportunity to paint them in the worst light possible, or judge poised to pass sentence on a term of incarceration. Instead, there is a plan in place for their betterment, and judicial officers in clearly defined roles who want to see that plan through.⁸³ To be clear, treatment court prosecutors still have a duty to hold participants accountable for their condemnable actions,⁸⁴ and judges have a duty to order consequences when a participant is noncompliant.⁸⁵ The law's psychological effect on a defendant, however, is radically different when the overall procedure is crafted to help them get better.⁸⁶

Having a basis in the principles of therapeutic jurisprudence also allows treatment courts to have an incredibly broad reach regarding the kinds of cases they can address. Present day treatment courts have expanded from their initial nexus of drug treatment into juvenile drug treatment courts, DUI/DWI courts, family treatment courts, mental health courts, veterans treatment courts, tribal healing to wellness courts, and opioid intervention courts.⁸⁷ Drug courts continue to be the most common type of treatment court, comprising forty-four percent of the 3,856 treatment courts operating

80. *Id.* at 126.

81. *See id.* at 125 (describing how therapeutic jurisprudence seeks to avoid antitherapeutic consequences in the practice of law); *see also* BUREAU OF JUST. ASSISTANCE, *supra* note 5, at 3 (describing a nonadversarial approach where "the team's focus is on the participant's recovery and law-abiding behavior—not on the merits of the pending case").

82. BUREAU OF JUST. ASSISTANCE, *supra* note 5, at 3.

83. *See id.*; *see also supra* text accompanying note 70.

84. *See* BUREAU OF JUST. ASSISTANCE, *supra* note 5 at 3 ("The responsibility of the prosecuting attorney is to protect the public's safety by ensuring that each candidate is appropriate for the program and complies with all drug court requirements.").

85. *See id.* at 15 (describing the importance of the judge as "the leader of the drug court team," and elaborating on their role of "encourag[ing] appropriate behavior and [] discourag[ing] and penaliz[ing] inappropriate behavior").

86. Randall T. Brown, *Systematic Review of the Impact of Adult Drug Treatment Courts*, 155 TRANSLATIONAL RSCH. 263, 268 (2010) ("Case-control studies most commonly have found that rates of recidivism and substance use are reduced for drug court participants when compared to substance misusing offenders not exposed to drug court, particularly for drug-related crime.").

87. *Treatment Courts*, OFF. JUST. PROGRAMS, U.S. DEP'T. JUST. (Apr. 11, 2024), <https://www.oj.gov/feature/treatment-courts/overview> [<https://perma.cc/PYF9-TMT4>].

in the United States as of 2019.⁸⁸ The second most common type of treatment courts are mental health courts which comprise about 12.7% of all treatment courts.⁸⁹ Mental health courts were created to support defendants who have a mental illness or a history of mental illness as diagnosed by a psychiatrist or psychologist.⁹⁰ Third most common are veterans treatment courts, comprising 12.4% of all treatment courts.⁹¹ These courts treat veterans who have substance use disorders, a history of violence, or post-traumatic stress disorder resulting from their military service.⁹² The next most common are family treatment courts, comprising 8.7%, juvenile drug courts, comprising 7.9%, and DUI/DWI courts, comprising 6.7%.⁹³ According to the Department of Justice, “Family Treatment Courts [] serve children, parents and families involved in the child welfare system due to parental substance use as a contributing factor to child abuse or neglect.”⁹⁴ DUI/DWI courts focus primarily on people with serious alcohol dependencies who have repeatedly driven under the influence.⁹⁵ Tribal Healing to Wellness Courts are adapted to meet the “substance abuse needs of each tribal community” by reference to “each Indian Nation’s culture, tradition, common practices and vision.”⁹⁶ Opioid intervention courts, a relatively new invention concentrated in the State of New York,⁹⁷ have attempted to respond to the growing opioid epidemic by immediately offering medication for opioid use disorder, counseling, and

88. KRISTEN DEVALL, CHRISTINA LANIER & LINDSAY J. BAKER, NAT’L DRUG CT. RES. CTR., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON TREATMENT COURTS IN THE UNITED STATES 6 (2022), https://ndrc.org/wp-content/uploads/2022/08/PCP_2022_HighlightsInsights_DigitalRelease.pdf [<https://perma.cc/8HU9-PQ5A>].

89. *Id.*

90. Courtney Black, *Mental-Health Courts: Expanding the Model in an Era of Criminal Justice Reform*, 63 WASH. U. J.L. & POL’Y 299, 308–09 (2020).

91. DEVALL ET AL., *supra* note 88, at 6.

92. *Veterans Treatment Court Program*, BUREAU JUST. ASSISTANCE, U.S. DEP’T. JUST. (Mar. 14, 2023), <https://bja.ojp.gov/program/veterans-treatment-court-program/overview> [<https://perma.cc/CY2Y-H72F>].

93. DEVALL ET AL., *supra* note 88, at 6.

94. *Family Treatment Court Program*, OFF. JUV. JUST. & DELINQ. PREVENTION, U.S. DEP’T. JUST. (May 25, 2021), <https://ojjdp.ojp.gov/programs/family-drug-court-program> [<https://perma.cc/6JBJ-5CL9>].

95. See NAT’L CTR. FOR DWI CTS., THE TEN GUIDING PRINCIPLES OF DWI COURTS 3–4 (2023), https://allrise.org/wp-content/uploads/2023/06/Guiding_Principles_of_DWI_Court.pdf [<https://perma.cc/DUW3-WWYH>].

96. TRIBAL L. & POL’Y INST., U.S. DEP’T. OF JUST., TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS vii–viii (2003), <https://www.ojp.gov/pdffiles1/bja/188154.pdf> [<https://perma.cc/gZMS-Y8EG>].

97. See DEVALL ET AL., *supra* note 88, at 4, app. A (listing the first opioid court opened in Buffalo, New York, in 2017, and further displaying that the state of New York is home to twenty total opioid treatment courts).

residential assistance to new arrestees at high risk of opioid overdose.⁹⁸ Therefore, it is apparent that the concept of therapeutic jurisprudence plays a key role in both the daily operations, and the overall scope of what treatment courts can offer to participants.

B. THE CONTEMPORARY TREATMENT COURT MODEL

As treatment courts expand both in number and in the scope of the problems they address, it is vital that standards are in place to guide their administration. The future expansion of treatment courts depends in large part upon establishing credibility as a judicial tool that improves outcomes, increases efficiency, and yields cost savings. This Section begins by explaining the contemporary best practice standards promoted by experts for efficacious treatment courts and concludes by laying out the benefits and cost savings that treatment courts can provide to the communities they serve.

1. Organization and Best Practice Standards

Although treatment courts have expanded their scope to address the unique problems of the communities they serve, the best evidence-based guide for the operation of treatment courts remains the Adult Drug Court Best Practice Standards. The Adult Drug Court Best Practice Standards were published in 2013, and further updated in 2015, by the National Association of Drug Court Professionals (“NADCP”).⁹⁹ The NADCP is an organization dedicated to “improving the justice system by using a combination of judicial monitoring and effective treatment to compel-drug using offenders to change their lives.”¹⁰⁰ They recently rebranded and are now known as “All Rise,” a name that they hope will better capture their mission to “empower emerging justice system innovations that promote recovery by addressing substance use and mental health.”¹⁰¹ This change is illustrative of how the drug court formula has sparked and guided a larger treatment court movement.

98. CTR. FOR CT. INNOVATION, THE 10 ESSENTIAL ELEMENTS OF OPIOID INTERVENTION COURTS 4–5 (2019), https://www.innovatingjustice.org/sites/default/files/media/documents/2019-07/report_the10essentialelements_07092019.pdf [<https://perma.cc/WFC7-XVQ4>].

99. *Adult Treatment Court Best Practice Standards*, ALL RISE, <https://allrise.org/publications/standards> [<https://perma.cc/KYC2-2EE6>].

100. *All Rise*, BUREAU JUST. ASSISTANCE, NAT’L TRAINING & TECH. ASSISTANCE CTR., <https://bjatta.bja.ojp.gov/ocp/national-association-drug-court-professionals> [<https://perma.cc/TML8-RC32>].

101. *We Are All Rise*, ALL RISE (June 21, 2023), <https://allrise.org/news/we-are-all-rise> [<https://perma.cc/EN3Q-RW2E>].

All Rise lists ten standards that are essential to the efficient and effective operation of treatment courts.¹⁰² Standard One, the court must objectively select participants who are high-risk¹⁰³ and high-need.¹⁰⁴ Standard Two, the court must ensure equity and inclusivity by “tak[ing] affirmative steps to detect and correct . . . disparate outcomes involving those who have historically faced discrimination.”¹⁰⁵ Standard Three, the court must employ an “informed, approachable, fair, respectful, attentive, open, and caring” judge,¹⁰⁶ who can preside over the court for no less than two consecutive years.¹⁰⁷ The judge’s demeanor and interpersonal skills are especially important in the treatment court context because of their unique therapeutic role.¹⁰⁸ Standard Four, the court must employ “behavior change strategies that are evidence-based, fair, and consistently administered.”¹⁰⁹ Incentives may include a gift card for gas or a haircut, while sanctions may consist of community service, increased testing frequency, or as a last resort, short jail sentences.¹¹⁰ Standard Five, the court must provide “a continuum of evidence-based treatment services.”¹¹¹ Standard Six, the court must supplement treatment with additional social services such as mental health treatment, counseling, housing, health care, and education to prevent long-term recidivism.¹¹² Standard Seven, the court must ensure substance abstinence through “frequent, random, and comprehensive drug and alcohol testing of participants.”¹¹³ Standard Eight, the court must employ a multidisciplinary team consisting of a “judge, program coordinator, prosecutor, defense attorney, community supervision officer, treatment representative, and law enforcement officer.”¹¹⁴ Standard Nine, the court must ensure that the quality of supervision and treatment

102. See generally *Adult Drug Court: Best Practice Standards*, NAT’L ASS’N DRUG CT. PROS., <https://allrise.org/wp-content/uploads/2023/06/Best-Practice-Standards-Flyer-Final-3.pdf> [<https://perma.cc/A28M-TW65>] (laying out evidence-based standards to assist drug treatment courts maximize their results).

103. *Id.* at 2 (defining high risk as “people who are . . . at a substantial risk for reoffending or have struggled to succeed in less-intensive supervision or treatment programs”).

104. *Id.* (“[P]eople who are addicted to intoxicating drugs or alcohol.”).

105. *Id.*

106. *Id.*

107. NAT’L ASS’N OF DRUG CT. PROS., *supra* note 70, at 20.

108. *See id.* at 21.

109. *Adult Drug Court: Best Practice Standards*, *supra* note 102, at 2.

110. In July 2023, I had the privilege of sitting in on a session of Marshall County’s Drug Treatment Court where these types of incentives and sanctions were utilized by Judge John Haney.

111. *Adult Drug Court: Best Practice Standards*, *supra* note 102, at 3.

112. *See id.*

113. *Id.*

114. *Id.*

services are not diminished by an excessive case load.¹¹⁵ And Standard Ten, the court must monitor its adherence to the best practice standards and carefully collect data relevant to the program's effectiveness.¹¹⁶

The vast majority of states have attempted to promote the administration of compliant treatment courts through varying levels of centralized action.¹¹⁷ The common thread running through almost all state treatment court administrations is a widely published list of standards for the operation of treatments courts within the jurisdiction.¹¹⁸ These standards are often derived, in whole or in part, from the NADCP's Adult Drug Court Best Practice Standards listed above.¹¹⁹

Beyond this commonality, different states have employed various statutory mechanisms to effectuate their goals. For example, California offers funding for treatment courts through the Comprehensive Drug Court Implementation Act and noncompetitive grants through its Collaborative Justice Courts Substance Abuse Focus Grant Program ("SAFG").¹²⁰ SAFG receives annual funding through the California Budget Act, which allocated \$1,160,000 for treatments courts in fiscal year 2023–2024.¹²¹ California also offers additional funds for family treatment courts and dependency drug courts through its

115. *See id.* at 4.

116. *Id.*

117. *See, e.g.*, FLA. STAT. § 397.334 (2023); WASH. REV. CODE § 2.30.010(3) (2023).

118. *See* Tracey Johnson, *State Standards for Problem-Solving Courts, 2018*, TABLEU PUB. (Nov. 17, 2022), <https://public.tableau.com/app/profile/tracey.johnson/viz/FINALPSCStandardsdriftOct2017/Dashboard1> (on file with the *Iowa Law Review*).

119. *See, e.g.*, WIS. ASS'N OF TREATMENT CT. PROS., WISCONSIN TREATMENT COURT STANDARDS 1 (2014), https://www.watcp.org/wp-content/uploads/2014/05/WATCP_Standards_April-2014.pdf [<https://perma.cc/NX83-TR6R>] (noting that the standards incorporate appropriate components of the *Adult Drug Court Best Practice Standards*); MICHAEL J. TARDY, ILL. SUP. CT., ADMIN. OFF. ILL. CTS., PROBLEM-SOLVING COURTS STANDARDS (Nov. 2019), https://www.illinoiscourts.gov/resources/a4b9d77c-b014-4174-b011-21a4ccd90521/PSC_Standards_2019.pdf [<https://perma.cc/68Ug-SDMR>] (stating that the standards were "developed in part from" the *Adult Drug Court Best Practice Standards*) ("Acknowledgement" page); NEB. SUP. CT., ADMIN. OFF. OF THE CTS. & PROB., NEBRASKA ADULT DRUG COURT AND DUI COURT BEST PRACTICE STANDARDS 3–6 (2020), <https://supremecourt.nebraska.gov/sites/default/files/rules/ch6art12app.pdf> [<https://perma.cc/TYA2-KQ5Z>] (listing ten standards that almost entirely mirror those laid out by the *Adult Drug Court Best Practice Standards*).

120. ROBERT V. WOLF, CTR. FOR CT. INNOVATION, JUD. COUNCIL OF CAL., CALIFORNIA'S COLLABORATIVE JUSTICE COURTS: BUILDING A PROBLEM-SOLVING JUDICIARY 13 (2005), https://www.courts.ca.gov/documents/California_Story.pdf [<https://perma.cc/3DV2-Y4C6>]; TIANA OSBORNE-GAUTHIER, JUD. COUNCIL OF CAL., GUIDE TO THE SUBSTANCE ABUSE FOCUS GRANT (SAFG) AND DEPENDENCY DRUG COURT (DDC) AUGMENTATION GRANT 1, https://www.court.s.ca.gov/documents/Guide_to_applying_for_the_Substance_Abuse_Focus_Grant.pdf [<https://perma.cc/2F7R-RZSg>].

121. OSBORNE-GAUTHIER, *supra* note 120, at 1.

Dependency Drug Court Augmentation Grant.¹²² Washington similarly provides state money for its treatment courts, however, instead of providing a set amount of funds in grants each year, the state promotes the use of federal grant funding by offering to match local and federal funding with state money.¹²³ Thus, Washington seeks to provide state money to supplement, rather than bear the entire cost, of treatment courts.¹²⁴ Importantly, Washington's matching requirement took effect one year after the legislation had been passed, thereby allowing treatment courts to operate using state funds while they applied for federal grants.¹²⁵ In 2001, the State of Idaho breathed life into its fledgling treatment court system through a series of Senate bills that "enable[ed] both parallel and integrated activity by the Supreme Court, the Department of Correction, and the Department of Health and Welfare."¹²⁶ That legislation also provided significant funding totaling nearly \$1.5 million.¹²⁷ Illinois's statute addresses the unique challenges of administering treatment courts in rural areas by allowing for two or more counties to pool their resources towards a single drug court that can best serve their needs.¹²⁸ These examples illustrate just some of the creative ways in which states have supported the development and expansion of compliant treatment courts through legislation.

However, it is important to note that whether or not state legislatures voice their support for treatment courts, the responsibility of creating and administering these courts falls squarely on the state's judiciary.¹²⁹ The ultimate authority to administrate treatment courts is constitutionally vested in state supreme courts.¹³⁰ Many state supreme courts utilize this role to promulgate operational standards, monitor compliance in existing treatment courts, and approve or decline the creation of new treatment courts.¹³¹ This responsibility represents a significant burden for already busy state supreme court justices. Therefore, it is common for state supreme courts to create committees within their already existing office of court administration tasked with overseeing the operations of treatment courts and the distribution of any available state funds. For example, Florida's Office of the State Courts Administrator has a

122. *Id.*

123. WASH. REV. CODE § 2.30.040 (2023).

124. *See id.*

125. *See id.*

126. *Development of Idaho's Drug Courts*, ST. IDAHO JUD. BRANCH, <https://isc.idaho.gov/solve-court/dh> [<https://perma.cc/7PDR-PHGH>].

127. *See id.*

128. 730 ILL. COMP. STAT. 166/15 (2024).

129. *See, e.g.*, ILL. CONST. art. VI, § 16; IOWA CONST. art. V, § 4.

130. *See, e.g.*, ILL. CONST. art. VI, § 16; IOWA CONST. art. V, § 4.

131. *See, e.g.*, NEB. SUP. CT., *supra* note 119, at 5-7.

dedicated Office of Problem-Solving Courts.¹³² Within that office, there exists a steering committee whose purpose is to “address[] the needs of court-engaged individuals with mental illness and substance use disorders through the use of differentiated case management principles and other evidence-based and emerging best practices.”¹³³ This responsibility manifests itself in updating best practice standards, developing training initiatives, and making funding recommendations.¹³⁴

2. Treatment Court Benefits and Cost Savings

The organizational composition of treatment courts is of paramount importance because compliant treatment courts are better both for the participants whose lives they transform and for the taxpayers funding them.¹³⁵ Treatment court participants benefit from compliance with statewide standards because those standards employ evidence-based best practices that improve outcomes.¹³⁶ This yields concrete benefits for vulnerable members of society in the form of reduced substance abuse, reduced isolation from society, the opportunity to remain in custody of one’s children,¹³⁷ increased opportunities for future employment, and many more intangible benefits that result from therapeutic jurisprudence and the community-based orientation of treatment courts.¹³⁸ Fundamentally, treatment courts represent a method of administering justice that acknowledges the debilitating effects of substance addiction while recognizing that the participant is a human being—not merely a criminal addict.

132. *Office of Problem-Solving Courts*, OFF. ST. CTS. ADM’R, FLA. CTS. (May 2, 2024), <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts> [<https://perma.cc/P2W8-WN5Y>].

133. Ord. *In re Steering Comm. on Problem-Solving Cts.*, No. AOSC22-29, at *1–2 (Fla. July 12, 2022) (Administrative Orders, Florida Supreme Court), <https://www.flcourts.gov/content/download/851453/file/AOSC22-29.pdf> [<https://perma.cc/SQ5P-SX2D>] (creating the steering committee through an administrative order).

134. *Id.* at *2.

135. NAT’L ASS’N OF DRUG CT. PROS., *supra* note 70, at 1 (“Drug Courts that watered down or dropped core ingredients of the model paid dearly for their actions in terms of lower graduation rates, higher criminal recidivism, and lower cost savings. Failing to apply the *Ten Key Components* has been shown to reduce the effectiveness and cost-effectiveness of Drug Courts by as much as one half.”).

136. *Id.* at 2. (explaining that the standards were drafted by a diverse and multidisciplinary committee comprising Drug Court practitioners, subject matter experts, researchers, and state and federal policymakers, and that each draft standard was subsequently peer reviewed by between thirty and forty practitioners and researchers with expertise in the relevant subject matter).

137. Leah K. Walker, *Benefits and Process of Family Treatment Court for Substance Abuse*, AM. ADDICTION CTRS. (Jan. 3, 2024), <https://americanaddictioncenters.org/rehab-guide/family-treatment-court> [<https://perma.cc/LWJ4-CMEL>] (“Parents in [family treatment court] programs were 15-40% more likely to retain their parental rights and be reunified with their children than parents in traditional family court.”).

138. *Id.*

The less abstract economic benefits of treatment courts are illustrated by data showing a significant reduction in recidivism rates and costs for treatment court participants as compared to other parole or incarceration measures. A 2011 meta-analysis of 154 independent evaluations found that drug court participation reduces recidivism from fifty percent to approximately thirty-eight percent.¹³⁹ The same study also found that the “reductions in recidivism persist for at least three years after program entry,” and similar reductions in recidivism were found in DWI courts.¹⁴⁰ A 2006 study of California drug courts found a similar twelve percent reduction in recidivism amongst drug court participants.¹⁴¹ Further, it found that among drug court graduates, recidivism was reduced even further from forty-one percent to seventeen percent.¹⁴²

Treatment courts cost significantly less than traditional incarceration. “A comprehensive drug court system typically costs between \$2,500-\$4,000 annually for each offender, compared to \$20,000-\$50,000 per person per year to incarcerate a drug-using offender.”¹⁴³ Estimates of the net benefit per treatment court participant vary wildly depending on methodology as well as court location and administration.¹⁴⁴ However, California, a state with one of the most developed treatment court administrations in the nation,¹⁴⁵ found an average net savings of \$11,000 per participant.¹⁴⁶ The nine drug courts studied yielded the state a net benefit of more than nine million dollars in cost savings.

This data illustrates the immense cost savings treatment courts provide. However, treatment courts that have not implemented best practice standards are unlikely to collect data because their limited funds are needed for day-to-day operations and cannot be stretched to employ additional personnel for data collection. This results in a self-perpetuating cycle where state legislatures are hesitant to fund treatment courts due to a lack of reliable in-state data,

139. Ojmarrh Mitchell, David B. Wilson, Amy Eggers & Doris L. MacKenzie, *Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts*, 40 J. CRIM. JUST. 60, 69 (2012).

140. *Id.* (noting that although the results for DWI courts were comparable, further studies were needed to ensure the accuracy of the result).

141. See ADMIN. OFF. OF THE CTS., JUD. COUNCIL OF CAL., RESEARCH SUMMARY: CALIFORNIA DRUG COURT COST ANALYSIS STUDY 3 (2006), https://www.courts.ca.gov/documents/cost_study_research_summary.pdf [<https://perma.cc/EGP8-AC6A>] (comparing the average rearrest rates of a comparison group and drug court participants).

142. *Id.*

143. *Drug Courts as an Alternative to Incarceration*, STAN. NETWORK ADDICTION POL'Y, https://addictionpolicy.sites.stanford.edu/sites/g/files/sbiybj25011/files/media/file/snap_criminaljustice_drugcourts.pdf [<https://perma.cc/N95R-ERR9>].

144. *Id.* (“Drug court effectiveness varies significantly. Research suggests that results are best when the court uses a transparent, consistent approach to applying sanctions, has significant leverage over the offender, and employs a uniform model.”).

145. See WOLF, *supra* note 120, at 3.

146. ADMIN. OFF. OF THE CTS., *supra* note 141, at 3.

and treatment courts are unable to collect reliable in-state data due to a lack of funding.¹⁴⁷ When treatment courts are run well, they are a budget-friendly option for state legislators, even if they require up-front expenditures.

Given the significant benefits of reduced recidivism and cost savings associated with compliant treatment courts, there is ample motivation for strong legislative action to help overcome the organizational difficulties inherent in creating treatment courts that are compliant with evidence-based best practice standards. States that have not yet taken up the gauntlet of treatment court administration can benefit immensely from the strategies utilized by those that have. As treatment courts have rapidly proliferated and states have come up with a myriad of ways to optimize their efficiency, there is no longer any excuse for a state legislature to sit idly by. Unfortunately, Iowa is one such state that has not yet provided the legislative support necessary to reap the full benefits of treatment courts.

II. THE CURRENT STATE OF TREATMENT COURTS IN IOWA

Iowa treatment courts are composed of incredibly dedicated judges and multidisciplinary teams who strive every day, sometimes on an unpaid volunteer basis,¹⁴⁸ to improve the lives of treatment court participants. However, due to a significant lack of oversight and supportive action from Des Moines, these grassroots efforts are underdeveloped when compared to other state treatment court administrations. First, this Section examines the significant compliance issues in Iowa's present treatment court administrative scheme. Next, this Section discusses the severe lack of funding that causes a lack of uniform compliance in Iowa's treatment courts. Finally, this Section describes some of the problems facing rural treatment courts that are of exceptional importance in an agricultural state like Iowa.

A. ADMINISTRATIVE/COMPLIANCE PROBLEMS

A simple inventory of the number of treatment courts in Iowa, as compared to other states with similar populations, illustrates a significant disparity. As of 2019, Iowa had thirty-seven operating treatment courts; significantly less than states with similar populations like Utah (69), Nevada (62), Arkansas (99), New Mexico (73), and Idaho (69).¹⁴⁹ Of course, the quantity of treatment courts in a state is not dispositive of how efficiently and effectively those courts

147. CHEESMAN II & LYLES, *supra* note 8, at 1–2 (explaining how the kind of evaluation sought by the state is impossible because treatment courts are currently noncompliant, and any attempt to collect data would yield disappointing results).

148. *Marshall County Drug Court*, BUREAU JUST. ASSISTANCE, U.S. DEP'T JUST. (Dec. 17, 2021), <https://bja.ojp.gov/funding/awards/15pbja-21-gg-04238-dgct> [<https://perma.cc/8CRT-BMV4>].

149. DEVALLE ET AL., *supra* note 88, at 8–9.

treat participants. However, the picture becomes even clearer when one learns that Iowa has only adopted statewide standards for its family treatment courts. Thus, the state's adult drug, juvenile drug, mental health, OWI, domestic violence, and veterans' treatment courts are currently operating without a state approved framework to guide their practices and minimal supervision from the Judicial Branch. Iowa is one of only a handful of states in the country that have failed to implement statewide standards for its treatment courts.¹⁵⁰

The Iowa Legislature indicated some interest in treatment courts when it passed House Bill 2492 in 2018.¹⁵¹ Division VI of that Bill required the Iowa Judicial Branch and the Department of Corrections to study the effectiveness and recidivism rates of Iowa's treatment courts and file a report with the general assembly detailing their findings.¹⁵² Partnership with the National Center for State Courts ("NCSC"), an independent, nonprofit organization whose mission is to improve the administration of justice in state courts through research consultations and training opportunities, resulted in two reports—one summarizing the current condition of Iowa's treatment courts, and another assessing future needs.¹⁵³ The findings of these reports provide concrete evidence of significant problems in Iowa's treatment court administration.

Iowa treatment courts were so poorly organized that NCSC concluded, "it is not currently feasible to perform the type of evaluation described in HF2492 within the specified time frame and to expect valid and reliable results"—claiming that such an evaluation could only be completed on treatment courts that are in good compliance with best practice standards.¹⁵⁴ Otherwise, the results would be unreasonably negative—implying that treatment courts themselves are not effective, when, in fact, it is the noncompliant administration of the court that yields negative results.¹⁵⁵ Iowa drug courts were found to be noncompliant with the key components in multiple ways.

First, some programs suffered from a lack of consistent judicial attendance, as volunteer judges had conflicts between the treatment court program and their regular assigned dockets.¹⁵⁶ A few programs even employed citizen

150. See Johnson, *supra* note 118.

151. Justice System Appropriations Bill, H. File 2492 Division VI, 87th Gen. Assemb., Reg. Sess. (Iowa 2018).

152. *Id.*

153. See generally CHEESMAN II & LYLES, *supra* note 8; BROSCIOUS ET AL., *supra* note 6.

154. CHEESMAN II & LYLES, *supra* note 8, at 1. (emphasis omitted) (explaining how the kind of evaluation sought by the state is impossible because treatment courts are currently noncompliant, and any attempt to collect data would yield disappointing results).

155. *Id.*

156. BROSCIOUS ET AL., *supra* note 6, at 15.

panels in the place of a judge.¹⁵⁷ While community engagement is commendable, this practice could raise substantial due process problems and has not been sufficiently researched in the treatment court context.¹⁵⁸ These practices are significant departures from the recommendations of Standard Three relating to the role and responsibilities of the judge.¹⁵⁹ Second, very little communication occurred amongst local treatment courts in adjacent jurisdictions with “practitioners in several locations comment[ing] that they did not know how many other similar programs existed in the state and indicat[ing] that they did not know how their programs related to ‘what is going on in Des Moines.’”¹⁶⁰ This lack of communication implicates Standard Ten (monitoring), as it is hard to imagine how one can monitor performance and comply with best practice standards without keeping an ear to the ground as to the actions of other courts and the guidance issued by the state judiciary and legislature in Des Moines. Finally, many Iowa treatment courts admitted participants who were not high-risk, high-need as prescribed by Standard One.¹⁶¹ On average, twenty-five percent of Iowa treatment court participants were low-risk, low-need, and in Judicial District Two, fifty percent of participants were low-risk, low-need.¹⁶² This can have serious consequences on the efficacy of the treatment courts in question as “mixing participants with different risk or need levels together in treatment groups or residential facilities can make outcomes worse for the low-risk or low-need participants.”¹⁶³ These significant departures from evidence-based best practice standards warranted NSDC’s conclusion that cost-effectiveness and recidivism evaluations were premature.

157. *Id.*

158. *Id.*; see also NAT’L ASS’N OF DRUG CT. PROS., *supra* note 70, at 23 (“Studies have consistently found that Drug Court participants perceived the quality of their interactions with the judge to be among the most influential factors for success in the program.”).

159. NAT’L ASS’N OF DRUG CT. PROS., *supra* note 70, at 22 (“Unstable staffing patterns, especially when they involve the central figure of the judge, are apt to exacerbate rather than ameliorate the disorganization in participants’ lives.”).

160. BROSCIOUS ET AL., *supra* note 6, at 18.

161. CHEESMAN II & LYLES, *supra* note 8, at 24.

162. *Id.*

163. NAT’L ASS’N OF DRUG CT. PROS., *supra* note 70, at 7 (citing David S. DeMatteo, Douglas B. Marlowe & David S. Festinger, *Secondary Prevention Services for Clients Who Are Low Risk in Drug Court: A Conceptual Model*, 52 CRIME & DELINQ. 114, 114–34 (2006); Christopher T. Lowenkamp & Edward J. Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders [Technical Report]*, TOPICS CMTY. CORR., Jan. 2004, at 3, 3–8; Joan McCord, *Cures that Harm: Unanticipated Outcomes of Crime Prevention Programs*, 587 ANNALS AM. ACAD. POL. & SOC. SCI. 16, 16–30 (2003); Anthony Petrosino, Carolyn Turpin-Petrosino & James O. Finckenauer, *Well-Meaning Programs Can Have Harmful Effects! Lessons from Experiments of Programs Such as Scared Straight*, 46 CRIME & DELINQ. 354, 354–79 (2000)).

B. FUNDING

Iowa treatment courts suffer from a lack of funding and the inefficient mechanism by which those funds are currently distributed. In the past decade, lawmakers in Des Moines have demonstrated a reluctance to sufficiently finance the Judicial Branch. Although the Judicial Branch is a co-equal, independent branch of government, it relies upon the state legislature for funding.¹⁶⁴ The conflict reached a boiling point in 2018, when then Iowa Supreme Court Chief Justice Mark Cady pulled no punches and said that years of stagnant funding were “beginning to tear at the very fabric of [the Judicial Branch’s] operation and mission.”¹⁶⁵ This lack of reliable funding led the Judicial Branch to institute a years-long moratorium on the creation of more treatment courts that only recently ended on July 23, 2023.¹⁶⁶

The complete absence of support and funding has created an environment in which it is incredibly difficult to operate a compliant treatment court. The 2018 NCSC study found that, “[i]n general, Drug Courts have been left to their own means to fund and provide training to Drug Court Judges and staff, identify treatment providers, and otherwise enhance their programs.”¹⁶⁷ Many courts rely on federal grants to continue their operations, and some even operate on an entirely volunteer basis.¹⁶⁸ For example, Judge John Haney operates a small drug treatment court program in Marshalltown, Iowa that was completely unfunded until it received a federal grant of \$550,000 in 2021.¹⁶⁹ For years, the Marshall County Drug Treatment Court Program “existed purely through the desire of Drug Court Team members to provide an effective alternative to prison for Marshall County residents.”¹⁷⁰ Although Judge Haney thoroughly deserved being selected for the 2022 Iowa Corrections

164. See Letter from Robert D. Gast, St. Ct. Adm’r, Iowa St. Ct. Admin., to Kraig Paulsen, Dep’t of Mgmt., et al. (Dec. 7, 2023), https://www.iowacourts.gov/static/media/cms/FY25_Budget_Submission_Letter_Iowa__DA83BF114D6BF.pdf [<https://perma.cc/7NBK-UZWH>] (requesting that the Iowa House and Senate approve increases to the Judicial Branch budget).

165. Stephen Gruber-Miller, *Chief Justice: Iowans Are Losing Access to Justice*, DES MOINES REG. (Jan. 10, 2018, 4:01 PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2018/01/10/chief-justice-state-judiciary-insufficient-resources-tearing-very-fabric-justice-system/1016396001> (on file with the *Iowa Law Review*).

166. See *id.* (“Budget struggles in previous years have also forced the judicial branch to place a moratorium on expanding specialty courts such as drug courts.”); IOWA CT. R. 22.41(2) (establishing that new treatment courts must apply to the “the local district court administrator and state treatment court coordinator”).

167. CHEESMAN II & LYLES, *supra* note 8, at 11.

168. See, e.g., BUREAU OF JUST. ASSISTANCE, *supra* note 148.

169. *Id.*

170. *Id.*

Association Outstanding Public Official of the Year award,¹⁷¹ such an individual feat should not be necessary for Iowa citizens to have access to treatment court services. The government's hypocrisy in this area is especially stark considering that the Governor's Office of Drug Control Policy holds up treatment courts as a primary component of "Iowa's [e]volving [r]esponse" to drug abuse.¹⁷²

Funds are not only insufficient, but also inefficiently distributed. Funds for Iowa drug courts are distributed via the governor's annual Justice Appropriations Bill to the Department of Corrections.¹⁷³ The money is divided amongst the judicial districts with instructions for districts operating drug courts to maintain those drug courts.¹⁷⁴ The Appropriations Bill does not dedicate a specific amount of money to operate those drug courts, but rather leaves it up to the discretion of the district's Department of Correctional Services.¹⁷⁵ This puts drug courts in the precarious position of being subject to routine budget shortfalls. For example, in 2015, the drug courts in Ottumwa and Burlington nearly had to shut down completely due to a \$264,595 budget deficit in the Eighth Judicial District Department of Correctional Services.¹⁷⁶ Although those courts were saved at the eleventh hour, the budget shortfall forced them to reduce participant enrollment and the number of meetings between participants and judges.¹⁷⁷ One drug court in Council Bluffs facing a similar budget shortfall was forced to close entirely.¹⁷⁸ Distributing the money through each district's department of corrections leads to a lack of uniformity, and significant uncertainty among drug court judges as to whether their programs will have the funding necessary to operate.¹⁷⁹ This uncertainty is especially damaging in the treatment court context due to the importance of consistent interactions and intensive

171. *John J. Haney*, IOWA JUD. BRANCH, <https://www.iowacourts.gov/iowa-courts/district-court/judicial-district-2/judges-and-magistrates/john-j-haney> [<https://perma.cc/SUG7-KQP3>].

172. DAN WOOLERY, GOVERNOR'S OFFICE OF DRUG CONTROL POLICY (ODCP) & IOWA DRUG POLICY ADVISORY COUNCIL 12 (2021), https://hhs.iowa.gov/sites/default/files/IMHPC-ODCP-3.17.21_o.pdf [<https://perma.cc/4XUW-7GQV>].

173. *See generally* Justice System Appropriation Bill, S. File 562, 90th Gen. Assemb., Reg. Sess. 9–10 (Iowa 2023) (enacted), <https://www.legis.iowa.gov/docs/publications/NOBA/1374172.pdf> [<https://perma.cc/TR5B-9CN4>] (providing funding specifically for drug courts).

174. *Id.* ("It is the intent of the general assembly that the first judicial district department of correctional services maintains the drug courts operated by the district department.")

175. *Id.*

176. Grant Rodgers, *Judge: Legislators Should Fully Fund Drug Courts*, DES MOINES REG. (Sept. 24, 2015, 10:30 PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2015/09/24/judge-legislators-should-fully-fund-drug-courts/72767986> (on file with the *Iowa Law Review*).

177. *Id.*

178. *Id.*

179. *Id.*

supervision of participants.¹⁸⁰ District Associate Judge Kirk Daily, who presides over Ottumwa’s drug treatment court, put it perfectly: “It shouldn’t be left up to the individual department of correctional services . . . I think it needs to be fully funded by the Legislature and mandated.”¹⁸¹

C. RURAL ACCESS

Accessibility for participants in rural areas is an additional problem that is especially pertinent for treatment courts in Iowa. The 2020 Census was the first census in U.S. history showing a decade-long rural population decline.¹⁸² As population dynamics shift, rural communities are suffering from a lack of access to basic goods and services.¹⁸³ Food deserts,¹⁸⁴ barriers to healthcare access,¹⁸⁵ and limited access to justice are making it increasingly difficult for rural residents to maintain their standard of living.¹⁸⁶ Given that thirty-six percent of the state’s population lives in rural areas,¹⁸⁷ Iowa treatment courts must be especially diligent about the problems facing rural participants.

180. See NAT’L ASS’N OF DRUG CT. PROS., *supra* note 70, at 38 (“The Drug Court offers a continuum of care for substance use disorder treatment including detoxification, residential, sober living, day treatment, intensive outpatient and outpatient services.”).

181. Rodgers, *supra* note 176.

182. Kenneth Johnson, *Rural America Lost Population Over the Past Decade for the First Time in History*, U.N.H. (Feb. 22, 2022), <https://carsey.unh.edu/publication-rural-america-lost-population-over-past-decade-for-first-time-in-history> [<https://perma.cc/ZS2H-8DUE>].

183. *Challenges Facing Rural Communities*, NAT’L CONF. STATE LEGISLATURES (Jan. 21, 2020), <https://www.ncsl.org/agriculture-and-rural-development/challenges-facing-rural-communities> [<https://perma.cc/3LKY-SVC4>] (“Compared to their urban counterparts, rural areas have less internet access, fewer educational institutions, see more hospitals close and experience less economic growth.”).

184. *Solving Food Deserts in Iowa: When Small Towns Lose Grocery Stores, Where Do Residents Turn?*, GAZETTE, (Jan. 26, 2023, 2:47 PM), <https://www.thegazette.com/economy/solving-food-deserts-in-iowa-when-small-towns-lose-grocery-stores-where-do-residents-turn> [<https://perma.cc/F7EE-VU2B>] (“Between 1976 and 2000, Iowa lost more than half of its grocery stores. . . [O]nly about 63 percent of the census tracts in Iowa . . . have a ‘healthy food’ retailer within a half-mile. That is 9 percent lower than the national average.”).

185. *Healthcare Access in Rural Communities*, RURAL HEALTH INFO. HUB (Apr. 19, 2024), <https://www.ruralhealthinfo.org/topics/healthcare-access> [<https://perma.cc/3E77-4C7C>] (explaining that the low supply of healthcare in rural areas contributes the disparities in health outcomes).

186. CONF. OF STATE CT. ADM’RS., 2018 POLICY PAPER: COURTS NEED TO ENHANCE ACCESS TO JUSTICE IN RURAL AMERICA 1 (2018), https://cosca.ncsc.org/__data/assets/pdf_file/0026/23399/policy-paper-1-28-2019.pdf [<https://perma.cc/6WFB-ENLP>] (“[G]eographic distance, declining and aging populations, outdated technology with slow or nonexistent Internet connectivity, and problems attracting and retaining judicial officers, court staff, and legal professionals all present significant challenges that threaten the ability of Americans living in rural communities to access the justice system.”).

187. See *Rural and Urban Population*, IOWA CMTY. INDICATORS PROGRAM, IOWA ST. UNIV., <https://www.icip.iastate.edu/tables/population/rural-urban> [<https://perma.cc/4ZG5-V9CW>].

One may initially question why treatment courts in rural areas are necessary. It is a common stereotype to imagine rural farming communities as idyllic places where everyone knows each other by name, doors are left unlocked, and crime is seldom heard of. Contrary to this perception, “rates of substance use in rural areas have been increasing over time and rates of use among youth in rural areas surpasses rates of youth in urban areas.”¹⁸⁸ Methamphetamine and heroin usage are particularly problematic. One study found that “[r]ural eighth graders [were] 104 [percent] more likely to use amphetamines in general than their urban counterparts.”¹⁸⁹ Additionally, the labor-intensive jobs common in rural areas such as mining, farming, logging, and industrial work result in more injuries, which in turn leads to more prescribed opioids and ultimately more opioid addiction.¹⁹⁰

The rural setting creates several problems for the treatment court model. First, and most obvious, is the difficulty that participants have physically accessing courts.¹⁹¹ For example, in 2018, seventy-nine percent of Iowa’s treatment courts were located in eleven of the state’s ninety-nine counties.¹⁹² Thus, large geographic areas were left without access to treatment courts. Second, ancillary services such as “employment readiness programs, education programming (e.g., GED), health care, transportation, and housing assistance” are less likely to be available in rural areas.¹⁹³ These services are essential to buttress treatment courts because they provide basic necessities to help the participant successfully undergo treatment.¹⁹⁴ Third, rural treatment courts suffer from a lack of funding, even more so than their urban counterparts, and often struggle to obtain the resources necessary to operate.¹⁹⁵ Some courts end up passing on these costs to drug court participants, creating a barrier for those without the means to pay.¹⁹⁶ For these reasons, the proper

188. BROSCIOUS ET AL., *supra* note 6, at 41.

189. *Id.*

190. *Id.*

191. *Id.* at 42 (“The large geographic area and low population density of rural court jurisdictions makes access to the physical courts difficult for many citizens.”).

192. CHEESMAN II & LYLES, *supra* note 8, at 3.

193. Zephi Francis & Steven Czarnecki, *An Overview of the Rural Treatment Court Track*, DRUG CT. REV., Winter 2019, at 77, 78, https://ntcrc.org/wp-content/uploads/2020/05/DrugCourtReview_Winter2019_Part_5.pdf [<https://perma.cc/P26F-N7ML>].

194. NAT’L ASS’N OF DRUG CT. PROS., ADULT DRUG COURT: BEST PRACTICE STANDARDS VOLUME II 9 (2015), <https://allrise.org/wp-content/uploads/2023/06/Adult-Drug-Court-Best-Practice-Standards-Volume-2-Text-Revision-December-2018-corrected-May-2022.pdf> [<https://perma.cc/ACT3-AP2P>] (“Participants receive complementary treatment and social services for conditions that cooccur with substance use disorder and are likely to interfere with their compliance in Drug Court, increase criminal recidivism, or diminish treatment gains.”).

195. BROSCIOUS ET AL., *supra* note 6, at 42.

196. *See id.* at 43.

administration of Iowa treatment courts cannot be fully addressed without accounting for the difficulties inherent in the rural setting.

III. THE FUTURE OF IOWA TREATMENT COURTS

Iowa's treatment court pioneers have done a miraculous job of providing life-changing services to citizens in need despite a severe lack of centralized support and funding. However, it is high time that the State Legislature and Governor Kim Reynolds prioritize the proliferation of treatment courts through strong legislative action. The Judicial Branch has already begun to do its part in instituting reforms, but lawmakers in Des Moines can expedite the process. Each day they sit idly by represents a failure by the state to see justice administered in a maximally efficient and humane manner. This Section begins by describing the current efforts of the Judicial Branch to implement administrative improvements to Iowa's treatment courts. Next, this Section describes what treatment court legislation should look like by reference to already existing legislation in other states and proposes additional measures to address Iowa's unique situation.

A. JUDICIAL BRANCH EFFORTS

The Iowa Judicial Branch has engaged in significant efforts to implement the improvements suggested by NCSC in their 2018 study. They hired a statewide treatment court coordinator to provide leadership in implementing NCSC's suggestions and adopted Rule 22.41 ending the moratorium on new treatment courts.¹⁹⁷ Additionally, they have adopted preliminary procedures and begun developing standards for each kind of treatment court in the state.¹⁹⁸ However, no committees have been established to improve communication amongst local treatment courts, and between local treatment courts and the Judicial Branch. Turnover in the statewide treatment coordinator position¹⁹⁹ and the complete absence of legislative support have resulted in a frustrating lack of progress towards the goals laid out by the NCSC over four years ago.²⁰⁰

197. See In the Balance Podcast, *supra* note 75; IOWA CT. R. 22.41. The rule also addresses ex parte communications, and expressly allows for judges to "assume a more interactive role with the parties." IOWA CT. R. 22.41(3).

198. See generally IOWA JUD BRANCH, DEPARTMENTAL REPORT: IOWA PROBLEM SOLVING COURTS (2021), <https://publications.iowa.gov/38079> [<https://perma.cc/CER9-PL8A>].

199. *State Employee Salary Book*, IOWA LEGISLATURE, <https://www.legis.iowa.gov/publications/fiscal/salarybook> [<https://perma.cc/9TK5-NF3F>] (listing Eric Howard as the Statewide Treatment Court Coordinator from 2020 to 2022 and subsequently Richard Gordon in 2023).

200. See Gruber-Miller, *supra* note 165.

B. THE LEGISLATIVE SOLUTION

To bring its treatment courts into compliance and best serve treatment court participants, lawmakers in Des Moines must promulgate a statutory scheme to provide support for judges and their teams. Legislators will not be stepping into unknown territory, as many states have already passed similar legislation.²⁰¹ Iowa should utilize the lessons learned in other jurisdictions like Idaho, Washington, and Florida to provide a strong legislative mandate for treatment courts. This legislative mandate should provide the judicial branch with the financial resources necessary to operate compliant treatment courts while still allowing for the Judicial Branch to exercise its discretion in the day-to-day administration of treatment courts.

The legislation should begin with an unequivocal statement of the State Legislature's intent to encourage the proliferation of treatment courts in the state. For example, Florida's treatment court statute states: "It is the intent of the Legislature to encourage . . . agencies, local governments, law enforcement agencies, other interested public or private sources, and individuals to support the creation and establishment of [treatment courts]."²⁰² Such a statement will go a long way in encouraging local treatment court judges and teams to continue in their work knowing that the state government is supporting them.

Next, legislation should explicitly recognize the authority of the judiciary to create and administer treatment courts. Although no constitutional challenges have been raised regarding a state judiciary's ability to promulgate treatment court programs without express legislative approval, such a provision would essentially eliminate any future threat of litigation. For example, Washington's statute states in its findings that "[t]he legislature recognizes the inherent authority of the judiciary under Article IV, section 1 of the state Constitution to establish therapeutic courts."²⁰³ A similar provision which instead inserts article V, section 1, the comparable section of the Iowa Constitution, should be included in Iowa's future statute.²⁰⁴

The legislation should then encourage courts to work cooperatively to establish multijurisdictional partnerships, again borrowing from Washington's legislation.²⁰⁵ This would allow for rural counties with low populations to pool

201. See, e.g., FLA. STAT. § 397.334 (2023); WASH. REV. CODE § 2.30.010 (2023).

202. FLA. STAT. § 397.334(1) (2023).

203. WASH. REV. CODE § 2.30.010(3) (2023).

204. See IOWA CONST. art. V, § I.

205. WASH. REV. CODE § 2.30.050 (2023) ("Individual trial courts are authorized and encouraged to establish multijurisdictional partnerships and/or interlocal agreements under RCW 39.34.180 to enhance and expand the coverage area of the therapeutic court. Specifically, district and municipal courts may work cooperatively with each other and with the superior courts to identify and implement nontraditional case processing methods which can eliminate traditional barriers that decrease judicial efficiency.").

their resources and provide services together that would be impossible for them to provide alone. Such a provision is especially pertinent in Iowa given the large geographical areas that are currently without a treatment court,²⁰⁶ and would help alleviate some of the rural access problems discussed in Section II.C. This provision would be supported both by the practices of other states and the current practice of Iowa's Cass/Audubon Family Dependency Court which simultaneously serves two counties.²⁰⁷

Iowa's legislature could also facilitate rural access to treatment courts by encouraging the judiciary to explore virtual services as a new tool. During the COVID-19 pandemic, treatment courts across the country were forced to implement teleservices or cease operations. While this transition was not seamless,²⁰⁸ treatment courts were able to maintain vital services for their participants in the face of an unprecedented global health emergency.²⁰⁹ Preliminary research suggests that videoconferencing with criminal justice and substance abuse clients is effective.²¹⁰ Studies do not indicate that being in a client's physical presence is a "necessary therapeutic component" of treatment courts, or that videoconferencing decreases participation and engagement.²¹¹ Additionally, multiple states had already begun to integrate virtual services into their treatment courts before the COVID-19 pandemic began.²¹² Therefore, Iowa's legislature should expressly allow rural treatment courts that are difficult to access for participants to experiment with incorporating virtual services into their treatment court models.

Additionally, in order to ensure that new treatment courts are operating as effectively and efficiently as possible, the Iowa Legislature should require treatment courts to incorporate the principles and best practice standards promulgated by organizations like All Rise and encourage treatment courts

206. See *supra* text accompanying note 187.

207. BROSCIOUS ET AL., *supra* note 6, at 5 n.1.

208. See Elizabeth Hartsell & Jodi Lane, *Initial Lessons Learned During a Remote Drug Court Evaluation During the COVID-19 Pandemic*, 45 J. CRIME & JUST. 627, 636–40 (2022).

209. See Henry Sotelo, *Due Process: Specialty Courts and COVID-19 (Opinion)*, THIS IS RENO (Apr. 28, 2020), <https://thisisreno.com/2020/04/due-process-specialty-courts-and-covid-19-opinion> [<https://perma.cc/G6LE-P55N>].

210. Ashley B. Batastini, Christopher M. King, Robert D. Morgan & Briann McDaniel, *Telepsychological Services with Criminal Justice and Substance Abuse Clients: A Systematic Review and Meta-Analysis*, 13 PSYCH. SERVS. 20, 27 (2016).

211. See Substance Abuse and Mental Health Services Administration, *GAINS Webinar: The Future of Teleservices in Drug Courts Part I*, YOUTUBE (Aug. 5, 2021), <https://www.youtube.com/watch?v=6vSvqE55-uw> [<https://perma.cc/XLW5-FWMN>] (citing Batastini et al., *supra* note 210).

212. See generally KAREN OTIS, ANNIE SCHACHAR & AARON ARNOLD, CTR. FOR CT. INNOVATION, *TELESERVICES: HAPPENING NOW!* (2017), <https://www.innovatingjustice.org/sites/default/files/documents/Teleservices.pdf> [<https://perma.cc/37WK-DQ77>] (listing efforts by treatment courts in various states to offer virtual services to participants).

to continue seeking federal grant funding. The first objective can be accomplished by mandating that treatment courts incorporate a state approved canon of best practice standards. Under this mandate, all new treatment courts would be required to present a compliance plan that describes how the court will implement best practice standards before operating. The second objective can be accomplished by conditioning state funding for treatment courts upon their having applied for federal grant money. For example, Washington funds its treatment courts by matching the money each court receives from federal grants—providing a strong incentive for local courts to seek alternative funding sources, and ultimately, saving the state money.²¹³ Such a strict matching requirement may not be necessary, as a treatment court's ability to operate should not depend entirely on the issuance of competitive federal grants. However, requiring treatment courts to apply for the funds made available to them is a solid compromise that promotes stability in treatment court funding while at the same time incentivizing cost-saving behavior.

Finally, and most importantly, the legislation must commit to fully funding treatment courts, and the funds must be apportioned directly to the Judicial Branch rather than the Department of Corrections. The current scheme in which each district's department of corrections distributes funds to drug courts creates uncertainty in treatment court funding.²¹⁴ Additionally, the Department of Corrections is only charged with funding drug courts, leaving other types of treatment courts out in the cold.²¹⁵ The Department of Corrections is not in the best position to administer treatment courts as they primarily oversee correctional facilities.²¹⁶ An agency whose purpose is to incarcerate individuals should not be charged with administering courts whose primary goal is to keep participants out of such facilities. This is illustrated by the fact that the Department of Corrections only allocates \$28,065 of its \$25,363,343 central office budget towards offender mental health and substance abuse programs.²¹⁷ Funneling state funds directly to the Judicial Branch instead would allow for the statewide treatment court

213. WASH. REV. CODE § 2.30.040 (2023).

214. See *supra* notes 164–66 and accompanying text.

215. See *supra* text accompanying note 11.

216. About IDOC, IOWA DEP'T CORR., <https://doc.iowa.gov/about-idoc> [<https://perma.cc/52SD-UUNJ>].

217. Justice System Appropriation Bill, S. File 562, 90th Gen. Assemb., Reg. Sess. 9–10 § 4 (4) (Iowa 2023) (enacted); see also Katie Akin, *Kim Reynolds Signs \$8.5 Billion Budget into Law. Here's Where the Money Will Go*, DES MOINES REG. (June 2, 2023, 4:06 PM), <https://www.desmoinesregister.com/story/news/politics/2023/06/01/gov-kim-reynolds-signs-8-5-billion-budget-for-2024-w-hat-to-know/70278730007> [<https://perma.cc/XWS4-CNKR>].

coordinator and a steering committee²¹⁸ to efficiently distribute funds without the constant threat of competing budget items.

A reasonable first reaction to this proposal is to question where this funding will come from. Coincidentally, a large new funding source has recently become available that could easily launch the reforms listed above. Iowa is party to a national legal settlement with manufacturers and distributors of opioid painkillers.²¹⁹ The total settlement amount is \$26 billion, and Iowa will receive approximately \$174 million over the next eighteen years.²²⁰ The settlement calls for the funds to be utilized for “opioid remediation” defined as “care, treatment, and other programs and expenditures . . . designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of the opioid abuse crisis, including on those injured as a result of the opioid abuse crisis.”²²¹ Treatment courts offer a perfect avenue for these funds to be utilized in helping people who are suffering from addiction, even if they are not specifically tailored to opioid addiction. Two Iowa counties, Clay and Dickinson, are already planning on utilizing the settlement money to start an adult drug treatment court.²²² Former Attorney General Tom Miller supported the counties’ decision, saying “[t]his is a great model for other counties in using settlement money Drug courts can accomplish so many important goals, including reducing our prison population and costs and, most important, saving lives.”²²³ Therefore, the Iowa Legislature ought to utilize the money from this settlement to fund significant treatment court legislation.

CONCLUSION

Treatment courts are an effective alternative to incarceration that both reduce recidivism among their participants and save taxpayers money. However,

218. See *Steering Committee on Problem-Solving Courts*, OFF. ST. CTS. ADM’R, FLA. CTS., <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts/Steering-Committee-on-Problem-Solving-Courts> [<https://perma.cc/63HZ-9FMC>].

219. Tony Leys, *Iowa to Net \$174 Million over 18 Years from Settlement with Opioid Pill Distributors*, DES MOINES REG. (Feb. 25, 2022, 1:56 PM), <https://www.desmoinesregister.com/story/news/health/2022/02/25/iowa-opioid-settlement-attorney-general-mckesson-johnson-johnson-cardinal-amerisourcebergen/6942085001> (on file with the *Iowa Law Review*).

220. *Id.*

221. NAT’L OPIOID SETTLEMENT, ALLERGAN PUBLIC GLOBAL OPIOID SETTLEMENT AGREEMENT 9–10 (2022), <https://nationalopioidsettlement.com/wp-content/uploads/2022/11/FINAL-11.22.2022-AGN-Global-Agreement-and-Exhibits-for-circulation.pdf> [<https://perma.cc/78NE-4AW8>].

222. Lynn Hicks, *Iowa Attorney General Tom Miller: Drug Courts Are Smart Way to Use Opioid Settlement Money*, RIVER CITIES’ READER (Oct. 4, 2022), <https://www.rcreader.com/news-releases/iowa-attorney-general-tom-miller-drug-courts-are-smart-way-use-opioid-settlement-money> [<https://perma.cc/GX4T-QG7F>].

223. *Id.*

the State of Iowa is not currently providing the administrative and financial support necessary to reap the full benefits of treatment courts. If the burden of improving Iowa's treatment courts is left solely to the Judicial Branch and its already insufficient budget, it will be nearly impossible for Iowa to operate compliant treatment courts that administer justice in a maximally efficient and humane manner. Therefore, the Iowa Legislature should borrow from the statutory schemes created in states like California, Idaho, Washington, and Florida to promulgate treatment court legislation. That legislation should fully fund treatment courts and allocate those funds to the Judicial Branch, not individual departments of corrections, for more direct and efficient distribution. Now is the perfect time to promulgate such a statute, as funds are available through the state's settlement with opioid manufacturers and distributors. It is high time that the Iowa Legislature recognized the life-changing benefits of treatment court programs by granting them the funding they desperately need and deserve.