

Re-imagining nonpunitive approaches and rehabilitation in the courtroom: The case of drug courts in Chile

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journals.sagepub.com/home/punSebastián Galleguillos 

Abstract

The combination of punishment and treatment in drug courts to rehabilitate defendants reflects the expansion of *coercive penal care* in court settings. In the U.S, drug courts remain deeply controversial: whereas some scholars and policymakers advocate for their expansion based on recidivism and cost-benefit evaluations, others raise concerns regarding the use of legal coercion and punitive measures in therapeutic settings. In 2004, Chile became the first Latin American country to implement drug courts. Unlike the U.S. drug court model, drug courts in Chile are not allowed to impose jail sanctions on defendants, offering a more restricted setting to examine how treatment and penal supervision are merged. Using semi-structured interviews (N = 34), I explore how courtroom actors and case managers understand the core elements of drug courts and their potential punitive nature. The findings show that the implementation of drug courts by team members—embracing recovery beyond zero-abstinence goals and focusing on the defendant’s voluntariness to remain in the program—reflects a more balanced form of *coercive penal care*. Importantly, team members recognize the potential net-widening effects associated with this drug court model. I conclude by discussing the need to reformulate the role of defendants’ agency and punitive measures in problem-solving courts.

¹University of Massachusetts-Boston, Sociology & Criminology Department, United States

Corresponding author:

Sebastián Galleguillos, University of Massachusetts-Boston, Sociology & Criminology Department, United States.

Email: s.galleguillos@umb.edu

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Drug courts: coercive penal care and punitive concerns

The rise of problem-solving courts reflects the expansion of *coercive penal care* in court settings (Omori et al., 2024). Under this model, individuals are provided social services and must abide by court-decided conditions to avoid repercussions (e.g., incarceration or revocation of services) (Phelps & Ruhland, 2022). In the U.S., drug courts are the most popular type of problem-solving courts (National Drug Court Resource Center, 2022). Defendants admitted to drug courts receive treatment services while being supervised by a drug court team to encourage defendant compliance with the program conditions. Challenging the structure and practices of drug courts, sociolegal scholars and criminologists have raised concerns regarding the use of jail sanctions, punitive measures, and zero-abstinence goals in therapeutic settings. Yet, these analyses have often overlooked alternative drug court models implemented outside of the U.S. that do not necessarily incorporate punitive measures to retain defendants in the program.

The first drug court was implemented in the U.S. in the late 1980s by a judge who struggled with overcrowded dockets and defendants trapped in a continuous cycle of incarceration and rearrest (Goldkamp, 2003). Since the establishment of the first drug courts, scholars have debated and interpreted their punitive nature in different ways. Some scholars consider the emergence of drug courts as a response and alternative to the punitive and ineffective measures promoted by the war on drugs (e.g., see Lovins & Latessa, 2018). In contrast, Lynch (2012) argues that drug courts are an example of net-widening that expanded the punitive reach of the state within the U.S. War on Drugs. Importantly, Lynch (2012) recognizes that drug courts are less punitive than traditional courts.

Because drug courts were created in response to practical needs, they did not emerge grounded in a specific theoretical framework. However, some scholars propose that drug courts are theoretically grounded in therapeutic jurisprudence (e.g., Hora et al., 1999). Based on this framework, drug court judges may use rewards and sanctions to motivate changes in the defendants' behavior, along with intensive supervision monitored through status hearings.

Drug courts have rapidly expanded in the U.S., mainly supported by studies relying on the Risk-Need-Responsivity-Model (RNR). This model stresses the relevance of matching the intensity of the treatment to the individuals' risk, while targeting criminogenic needs and tailoring the treatment to specific learning styles (Andrews et al., 1990). This targeted management approach legitimizes correctional treatment (Hannah-Moffat, 2005) and, in the case of drug courts, promotes its use for high-risk and high-need individuals (AllRise, 2025).

In the U.S, the debate over the use and expansion of drug courts remains deeply controversial in the criminology and legal fields. Some strongly advocate for the use of drug courts given consistent evaluations demonstrating a reduction in recidivism and cost-

effectiveness (e.g., Marlowe, 2022). In contrast, other scholars criticize the punitive dimensions of drug courts and the use of legal coercion and sanctions in treatment settings, including the use of over-surveillance techniques and punitive sanctions (e.g., jail stays) when participants violate the conditions of the program such as using alcohol or drugs (e.g., Tiger, 2012; Moore, 2007). Also, critics target the recovery goals of some drug courts that aim to achieve zero-abstinence goals (Garcia & Lucas, 2021; Drug Policy Alliance, 2011).

Over the last decades, the drug court model has rapidly expanded globally, with different variations in how the model is introduced in different countries (see Nolan, 2009). Today, most of the efforts to expand drug courts are concentrated in Latin America and the Caribbean. This expansion has received wide support from the U.S. government, which has promoted drug courts as an alternative to traditional adjudication (Programa Drogas, Seguridad y Democracia, 2018). Regardless of this rapid expansion in the region, there is a lack of empirical studies addressing how drug court team members have implemented this model and the potential punitive nature of these practices. This lack of research has limited the debates about *coercive penal care* in models that do not necessarily align with the elements subject to criticism in the U.S.

Focusing on global criminology debates, Southern criminology calls for exploring penal policies and realities beyond the Global North (Carrington et al., 2016). Chile was the first Latin American country to incorporate drug courts into its criminal legal system in 2004. However, the Chilean model has a critical difference from the U.S. model: drug courts in Chile do not incorporate prison sanctions as a tool to respond to non-compliance. Thus, this model provides a more restricted setting where defendants are not threatened by the imposition of prison sanctions to comply with the program. As of 2025, 35 pre-trial courts provide drug court services for adults in Chile, and more drug courts are scheduled to open throughout the country.

As part of the Global South, the characteristics of the Chilean drug court model provide a unique opportunity to draw lessons and understand how drug court practices are implemented in a more restricted setting that blends treatment with penal supervision. This study aims to expand global debates about *coercive penal care* and punitiveness by conducting semi-structured interviews with drug court team members—prosecutors, judges, public defenders, and case managers—to understand the goals of drug courts and their potential punitive nature. Overall, the findings intend to provide critical insights on whether less punitive approaches are possible in problem-solving court settings.

The U.S. drug court model: origins, theoretical foundations, and expansion

As noted, drug courts were created as a practical response by the judiciary and therefore did not emerge grounded in a specific theoretical framework. Some scholars propose that drug courts are theoretically grounded in therapeutic jurisprudence (Hora et al., 1999; Winick, 2003). Wexler (1990) introduced the concept of therapeutic jurisprudence, focusing on both the therapeutic and antitherapeutic dimensions of legal mechanisms and the role that courtroom actors play in their use. However, other scholars have

challenged the therapeutic foundations behind drug courts by arguing that these problem-solving courts can be understood as either therapeutic alternatives or as expressions of the new penology (e.g., see Paik, 2011).

Regardless of the disputed theoretical foundations of drug courts, they have rapidly spread. In the U.S. alone, drug courts represent about half of all treatment courts, comprising more than 1600 adult drug courts nationwide (National Drug Court Resource Center, 2022). Recent research suggests that adult drug courts show an average graduation rate of 57% in the U.S. (National Drug Court Resource Center, 2022).

The expansion of drug courts has been mainly supported by quantitative studies focused on recidivism outcomes or cost-benefit analysis. Many meta-analyses suggest that drug courts are an effective approach to reduce recidivism (e.g., Mitchell et al., 2012; Shaffer, 2011), and synthetic data suggest they are a cost-effective policy (Bhati et al., 2008). Based on utilitarian reasons, drug court advocates in the U.S. even justify the use of coerced treatment to expand the model (Nolan, 2012).

In addition to the cost-benefit and outcome evaluations, drug courts have received bipartisan political support from various governments in the U.S. over the last few decades (Tiger, 2012). The expansion of drug courts has been backed by All Rise (formerly known as The National Association of Drug Court Professionals), an NGO that provides training and elaborates guidelines to operate drug courts. All rise has played a key role as a lobbyist advocating for the diffusion of drug courts (Douglas et al., 2015).

The majority of drug court studies and standards in the U.S. adopt the Risk-Need-Responsivity Model (RNR) to assess their effectiveness and recommend best practices. The RNR model stresses the relevance of matching the intensity of the treatment to the individuals' risk, while targeting criminogenic needs and tailoring the treatment to specific learning styles (Andrews et al., 1990). In the case of drug courts, Paik (2011: 176) advances that "risk is transformed from an overly punitive focus to a more therapeutically oriented one", where the punitive consequences could be even harsher if defendants do not comply with court conditions.

Scholars have criticized the RNR model because it fails to consider the offenders' motivation and disposition to engage in treatment and have proposed alternative rehabilitation frameworks (Ward & Brown, 2004). Unlike the RNR model, the desistance approach emphasizes that both risk factors and strengths are central to supporting rehabilitation (Kazemian, 2019) and highlights the critical role of human agency in this process (Laub & Sampson, 2001). The relevance of agency and identity in the desistance paradigm aligns with recovery approaches used to address substance abuse disorders (Best et al., 2017).

Mixing health and criminal justice: hybrid organizations and punitive concerns

Unlike traditional criminal courts, drug courts are meant to have a rehabilitative focus that merges clinical treatment with penal supervision. Therefore, drug courts operate as *hybrid organizations* where legal and nonlegal members must deal with therapeutic and criminal justice rationales to dispose of defendants (Baker, 2013). While criminal courts use sanctions with an intended punitive goal, drug courts rely on sanctions to motivate and change

defendants' behavior (Burns & Peyrot, 2003). This situation leads to the paradox where team members use sanctions with therapeutic goals regardless of the punitive consequences for the defendants (Moore, 2007; Tiger, 2012). As Hannah-Moffat & Maurutto (2012: 203) argue, problem-solving courts have "reassembled practices of welfare, treatment, and punishment" making it hard to distinguish the limits among them.

Criminologists and sociolegal scholars have raised several punitive concerns, including the use of intense monitoring techniques, application of sanctions, zero-abstinence goals, and net-widening effects. The surveillance techniques employed by drug courts go beyond the defendants' substance abuse problems, encompassing their morals and values (Fischer, 2003). Gowan & Whetstone (2012) coined the term *strong-arm rehab* to refer to the over-surveillance mechanisms employed by drug courts (e.g., mutual surveillance among defendants) that could lead to the stigmatization of those who do not comply with the abstinence goals of the program. Importantly, research suggests that the stigmatizing effects of drug courts could lead to an increase in recidivism outcomes (Miethe et al., 2000).

In addition, jail sanctions are a core component of U.S. drug courts in their structure of sanctions and rewards (Lindquist et al., 2006). Defendants in the program could spend more time in prison than the expected sentence adjudicated through adversarial procedures (Fulkerson et al., 2013; Goldkamp, 2000). For instance, Paik (2011) found that some defendants spent more time in prison than the original sentence as a result of subsequent arrests. At the same time, jail sanctions can interrupt the treatment provided to defendants and result in the disruption of the treatment, which could have drastic negative effects on the defendants' health and well-being (Programa Drogas, Seguridad y Democracia, 2018). In this regard, Ward & Kawalek (2024) argue that the use of short jail sanctions contravenes the therapeutic foundations of drug court.

The punitive dimension of drug courts in the U.S. is also reflected in the wide variety of behaviors that are subject to punishment. Scholars have found that attitudes such as showing a lack of respect or being dishonest are punished by some drug courts (Lindquist et al., 2006). Likewise, attendance failures (missing treatment sessions or court hearings) or noncompliance with employment or job search requirements are also subject to sanctions (Guastaferrro & Daigle, 2012).

Studies addressing the defendants' perception of coercion and punitiveness in drug courts and alternatives to incarceration are mixed. A recent study focused on two drug courts found low levels of perception of coercion among defendants (Bruzios et al., 2023), though other research has concluded that the perceived level of coercion depends on the legal structure of drug court programs (Young & Belenko, 2002). Importantly, research focused on alternatives to incarceration more broadly challenges the assumption that defendants always perceive prison sanctions as the most punitive response (Wood & May, 2003).

Regarding the foundations of drug court treatment, scholars and NGOs have criticized the zero-abstinence treatment models in the U.S. Drug courts in this country mainly rely on a zero-abstinence model where recovery requires the participants to abstain from alcohol or drug use over a specific period of time (Gallagher et al., 2017) Although relapses are permitted, abstinence is regarded as one of the core goals of the drug courts model,

and its breach is accordingly sanctioned (National Association of Drug Court Professionals, 1997). Critics stress that abstinence is a restrictive measure to assess participants' success (Drug Policy Alliance, 2011) and promote the idea that using drugs is intrinsically harmful or criminal behavior (Garcia & Lucas, 2021). As Lightowlers (2024) advance, the abstinence model ultimately reflects the punitive foundations of drug courts.

Scholars have also raised concerns regarding the net-widening effects of drug courts. In a nationwide study of U.S. drug courts, Lilley (2017) concluded that the expansion of drug courts led to an increase in the number of arrests for misdemeanors. This finding raises concerns about the unintended consequences of mixing health and criminal justice approaches.

In sum, research on the punitive dimensions and unintended consequences of drug courts has identified effects at the individual level (affecting how defendants are processed by the legal system) and at the broader level regarding potential net-widening effects. Overall, this body of research shows that drug courts can also contravene the allegedly therapeutic foundations. Importantly, this body of research on punitiveness has been limited to drug court models where the use of prison sanctions is a key component of the model.

Drug courts implemented in other countries do not necessarily embrace the goals of zero abstinence and adopt more flexible approaches when dealing with drug use and reoffending. Nolan (2009) conducted the most extensive study on drug courts from a comparative perspective, including jurisdictions from North America, Europe, and Oceania. His research highlights that countries such as Australia embrace the gradual reduction of drug consumption as a positive step toward rehabilitation. Australian researchers consider the guiding harm-reduction philosophy and measure of success beyond abstinence as an important feature of Australian drug courts (Hughes & Shanahan, 2019). In the next section, I will describe the core elements of the Chilean drug court model that do not incorporate jail sanctions, emphasizing its outcomes and problems.

Drug courts in Chile

Chile was the first Latin American country to incorporate drug courts into its criminal legal system in 2004. The implementation of the first drug court pilot was prompted by a seminar organized by the U.S. Embassy and the think tank Fundación Paz Ciudadana that invited a U.S. drug court judge to share her experience (Droppelman, 2010). In 2012, the Ministry of Justice signed an interinstitutional agreement with the Public Prosecutor's Office, the Judiciary, the Public Defender's Office, and Fundación Paz Ciudadana to coordinate the work and expansion of drug courts.

Like most Latin American countries, Chile incorporated drug court programs through a deferred prosecution program called *suspensión condicional del procedimiento* (adjournment in contemplation of dismissal). Prosecutors can apply this program to crimes punishable up to five years if defendants do not have criminal records and consent to participate in drug courts. Chilean scholars consider the adoption of a pre-adjudication model a correct decision that prevents potential coercion to accept responsibility (Cuneo & Medina

González, 2022), though a subsequent reform also allowed adolescents to receive drug court treatment through post-adjudication mechanisms.

In Chile, drug court teams include a judge, prosecutor, defense attorney, and a case manager team integrated by a social worker and a psychologist (Manual de Procedimientos, 2021). Drug court teams are led by a coordinator from the Public Prosecutor's Office, and hearings are presided over by judges. Once defendants enter the program, they will be monitored by a drug court team and required to attend monthly status hearings. Drug court defendants attend a treatment program, along with complying with certain legal conditions requested by the prosecutors and approved by the judge. Typical legal requirements include avoiding contact with the victim or checking regularly at a police station¹.

In contrast to the U.S., drug courts in Chile are not specialized dockets and do not use prison sanctions to address defendants' non-compliance. Given the lack of specialized dockets, ad hoc legal actors can attend a drug court hearing (e.g., a public defender taking over a colleague's hearing due to a scheduling conflict). The drug court guidelines also stress that participation in drug courts is voluntary. Importantly, the guidelines—citing therapeutic foundations of drug courts—establish that judges can substitute the drug court participation of defendants and replace it with another condition regulated by the adjournment in contemplation of dismissal (e.g., checking in a police station) (Manual de Procedimientos, 2021). In the most recent study of drug courts in Chile, Hersant & Quilodrán (2024) conducted courtroom observations and semi-structured interviews with drug court team members and policymakers. The authors concluded that the flexibility of the Chilean drug court guidelines allows for different implementation and practices across the country, which are shaped by the stability of drug court teams and the training they have received.

The few studies available in Chile suggest that drug courts are effective in reducing recidivism. Using a quasi-experimental approach, Fundación Paz Ciudadana (2018) found that drug court participants had a 21% recidivism rate compared to 30% for the comparison group. In addition, the Judiciary published a report concluding that program graduates had a lower recidivism rate (17%) compared to those who were terminated (23%) (Poder Judicial, 2016). More recently, a study using a sample of adolescents from Santiago de Chile found that the recidivism rate for program graduates was lower than 15% (Zapata Arca, 2023).

Although research suggests positive outcomes in terms of recidivism, several studies and reports highlight problems in the implementation of drug courts. First, the impact does not offset the increased cost associated with drug courts (Fundación Paz Ciudadana, 2018). Second, the Chilean model has been criticized because there is a lack of incentives for participants to remain in the program, since they usually do not risk prison sanctions² (Piñol et al., 2011). This issue was recently addressed through a legal reform enacted in September 2024 that incorporated drug courts into the Criminal Procedural Code and expanded the range of eligible crimes from three up to five years (Law 21,694). Third, the existing administrative data reveal problems in the processing of cases. The most comprehensive report published by the Judiciary indicates that in 2014, case managers conducted 5590 pre-screenings and found that only 851

participants met clinical criteria (Poder Judicial, 2016). Of these 851 participants, only 360 diagnoses were confirmed by a clinician and 242 were admitted to treatment. Although more recent data does not report the total number of referrals, the number of admissions per year has steadily increased— from 281 in 2020 to 545 in 2023— (Poder Judicial, n/d). Regarding graduation rates, the Judiciary does not report graduation rates but rather the number of individuals who graduated and were terminated within a single year. Based on this measure, about 44% of the participants graduated in 2023³.

To the best of my knowledge, no study has addressed the perception and implementation of drug court practices by team members in drug court models that do not incorporate prison sanctions. This is the first study conducted to explore how drug court team members in Chile understand the goals of drug courts, their potential punitive nature, and the limitations of this more restrictive model. In particular, this study is guided by two guiding research questions:

1. How do drug court team members define the goals and the recovery process in drug courts?
2. How do drug court team members grasp the potential punitive nature of drug courts and their limitations?

Methods

I conducted semi-structured interviews (N = 34) with drug court team members from all agencies involved in drug courts between June and August 2024. The sample includes 23 lawyers, seven social workers, and four psychologists. Participants were recruited from the Public Defender's Office (N = 10), the National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption (N = 9), the Public Prosecutor's Office (N = 8), and the Judiciary (N = 7). Participants were employed in Santiago (35%) and Regions (65%)—including regions from Northern, Central, and Southern Chile— representing different realities of drug courts across the country⁴. Participants were on average 45 years old, and 65% were females. Regarding their experience, participants reported an average of 15 years working in their current agencies and nine years in drug courts.

To recruit participants, I contacted each agency and requested a contact list of their members currently assigned to drug courts. All agencies but the Judiciary provided a list of the members assigned to drug courts⁵. After obtaining the contact lists, I started the recruitment by contacting prosecutors because this agency has drug court coordinators throughout the country. I contacted drug court coordinators via email and invited them to participate in an interview following IRB guidelines and attaching an informed consent. Considering that case managers are hired either part-time (regions) or full-time (Santiago de Chile) (Hersant & Reyes Quilodrán, 2024), I aimed to recruit members working in regions and the capital to reflect different perspectives among team members.

In addition to the list, I employed snowballing techniques to reach other team members currently assigned to drug courts for three reasons. First, this approach allowed me to

contact members assigned to drug courts, as some participants originally listed in the recruitment list were assigned to other roles or moved to other agencies. Second, at the time of the interviews, several ongoing reforms were in place surrounding the agency in charge of case managers, which included firing case managers and eliminating some units. Thus, snowballing techniques allowed me to reach members by referrals and identify active case managers. Finally, the snowballing techniques allowed me to contact and identify pre-trial judges assigned to drug courts.

On average, interviews lasted 51 min, and audio was recorded and stored in a folder protected by a secure password. To protect the confidentiality of my participants, I created ID codes to rename each audio file and transcription. I used the Sonix software to transcribe the audio files, which provides instant transcriptions in Spanish. When needed, I reviewed the audio files to ensure the quality of each transcription, especially when using quotes to reflect the themes described in this study.

Interviews were focused on a variety of topics, including the decision-making process behind drug court decisions (e.g., how team members decide to terminate participants in the program), the potential punitive nature of the model, and limitations related to the lack of prison sanctions. Before asking about the potential punitive nature of drug courts, I asked participants about the core goals of drug courts and to what extent they are achieved in practice. After that, I explored whether participants had identified punitive dimensions of drug courts in Chile, and if so, the specific areas where that is reflected.

I began the analysis of each transcript using open coding and an inductive approach, including handwritten notes and memos. After manually coding the transcripts, I compiled the codes into a codebook using ATLAS.ti. I used this software to analyze the data, including the generation of axial codes that capture broader categories, along with definitions and examples of each theme.

Findings

A therapeutic alternative beyond the abstinence dichotomy

Participants defined drug courts as a comprehensive opportunity to rehabilitate defendants and provide them with individualized attention and treatment. In contrast to the adversarial system—mainly focused on punishment—drug courts provide a more flexible approach to target substance abuse disorders that often mask deeper human problems:

I would say the main goal is to make a change in the participant's life. This program is not only meant to target substance abuse disorders. It is more comprehensive. Many defendants realize during the program the problems they had carried since childhood or problems with their parents, children, etc. [...]. The main goal is to make people realize that they are covering something more complex, and support them beyond saying *stop smoking 20 marijuana joints, stop drinking two wine boxes*. It is more comprehensive" [Public Defender #2].

This comprehensive approach allows team members to address the causes of criminal behavior better and achieve subsequent goals such as reducing recidivism and saving taxpayer money.

Team members acknowledge that recovery in drug courts is not a linear process where the only objective is to achieve total abstinence. As a judge explains, making progress in drug courts is a gradual journey:

We have learned to accept that, here, progress is gradual. Progress [in the program] does not always mean to achieve zero consumption. Somehow, we have come to accept this is a complex issue [...] We have had cases where we have managed to get participants to at least stop poly-substance use. [Judge #1].

Likewise, participants explained that switching from hard to soft drugs is also considered positive progress in the program:

The goal is that defendants slow down or reduce their consumption, especially regarding its toxicity. We have successful graduates who did not reach total abstinence, but, for example, shifted from very toxic drugs—such as cocaine paste, synthetic drugs, or new emergent drugs—to use marihuana once in a while [Case manager# 7].

This approach— focused on switching from hard to soft drugs—is especially useful in cases of polydrug use where defendants use both hard drugs and marihuana.

From a treatment perspective, the agency in charge of case managers and rehabilitation centers that provide services through drug courts also prioritize reducing drug consumption over total abstinence when providing treatment:

The National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption and treatment centers, their objective is to [...] reduce the risk and harm. Not all centers aim for total abstinence, but rather a harm reduction regarding consumption [Public Defender #5].

Therefore, both legal and nonlegal actors agree to focus beyond abstinence when it comes to evaluating the defendants' progress in the program.

Participants familiar with drug court models implemented in other countries are aware of the predominant role of abstinence for compliance and assessment of recovery. For example, a prosecutor noted that in other countries, drug courts address relapses through jail sanctions:

Like in other countries, there are relapses. [Drug courts in other countries] usually have zero tolerance towards this and revoke immediately, even with jail sanctions. In Chile, we understand that relapses are part of the rehabilitation process, and no one will achieve complete abstinence from one day to another. It is a continuum. And from that perspective, sometimes we do not work [seeking] zero abstinence, but rather to reduce the pattern of consumption [Prosecutor #5].

This focus on rehabilitation beyond abstinence constitutes an important difference from the U.S. drug court guidelines. The role of jail and prison sanctions to address noncompliance is further developed in the next section focused on the non-punitive nature of drug courts in Chile.

Rejecting the punitive nature: the role of voluntariness and individual agency

Participants recognized that the nature and structure of criminal courts are inherently coercive. Although drug court team members embraced rehabilitation goals, they recognized that attending drug court hearings and treatment is a burden that would not be required in a typical adjournment of contemplation of dismissal. Yet, participants frame drug courts as a non-punitive alternative to receive treatment based on the role of voluntariness and lack of prison sanctions in this model.

Participants reject the punitive nature of drug courts because this is a voluntary program that requires the consent of the defendants to participate. As a prosecutor notes, the consent of participants is a critical requirement to be admitted into the program:

Punitive? I would say no. Well, it is voluntary. Therefore, if the defendant is not willing to go through treatment, that person will not be admitted [into the program]. As a team, we will look for other conditions, because, no, we do not coerce [...]. It has happened that the psychologist says that a person is a candidate for drug courts: the conditions are met, there is a problem that requires treatment, and that person qualifies for an adjournment. But, if that person is not willing to go through treatment, in that case, the adjournment is reached without incorporating the drug court condition [Prosecutor #8].

Therefore, participants are informed of their right to reject the treatment and move forward in the criminal procedure with other legal alternatives to settle their cases.

Likewise, agency plays a key role when participants decide to drop out of the program. Drug court team members have reached a consensus that when participants drop out of the program, defendants should be allowed to stay in the deferred prosecution program, preventing them from resuming adversarial mechanisms:

[When defendants say]: *I do not want to continue in the program [...].* No one is going to request a revocation. That does not happen. And if that happens, if a prosecutor eventually requests the hearing, the judge will say: *no mister prosecutor. Here we are under a different logic, we are dealing with treatment* [Public Defender#1].

Team members explained that they reached this consensus through working sessions (*mesas de trabajo*) organized by the Ministry of Justice since 2012. Courtroom actors have used these meetings to discuss the overarching goals of drug courts and the need to assure defendants they will not be prosecuted if they do not graduate from the program. Interview participants recognized that in the early years of the program, some defendants were further prosecuted when they were terminated or decided to drop out of the program. Legally speaking, drug court team members interpret that termination or dropping out of the program is considered a breach, but not a major breach of the conditions of the adjournment that would require revoking the adjournment in contemplation of dismissal and resuming the criminal procedure.

Case managers also emphasize the role of voluntariness for service delivery and participation in the drug court program. Voluntariness is regarded as a legal requirement for staying in the program and for receiving services:

[If a defendant does not engage in the program], we will eliminate him from the program without consequences [...]. The rehabilitation centers are voluntary. So, if a person does not want to attend, we could do some rescue actions, try to talk and motivate them, but they are the ones who make the decision [Case manager# 4].

Thus, voluntariness and the defendants' agency guide the decisions of both legal and non-legal actors regarding judicial supervision and service delivery.

Voluntariness is a key element considered by team members to decide the termination of defendants from the program. Team members stress that missing treatment sessions or court hearings do not necessarily result in the termination of participants. However, the assessment of voluntariness is key to deciding the future of defendants in the program:

From a psychological perspective, we understand motivation as a dynamic entity, right? A changing entity, fluctuating [...]. A person, at some point, was motivated and in a good place to accept a compromise. However, the challenges related to consumption, the relationship with consumption, often diminish this motivation and lead to noncompliance. That is what we usually observe. We wait people for two or three hearings. And after that, we have to subpoena to force them if we do not have any kind of contact. In that scenario, we check whether the person's willingness is intact, which is what is important for us: whether that person voluntarily wants to continue the process or not.

[Case manager #1].

Therefore, in cases where team members identify that defendants are not willing to continue with the program, they decide to terminate them without further legal consequences.

Addressing noncompliance: therapeutic frames and model limitations

The non-punitive nature of the Chilean drug court model is also reflected in the more limited number of sanctions and strategies employed by drug court team members to address noncompliance. Therapeutic frames are the main tool used by team members to remind participants of the goals of the program and encourage them to continue the treatment. As a judge explains, therapeutic frames, instead of resuming adversarial procedures, are how they approach defendants who are not engaging in treatment or attending hearings:

When people do not engage with the program because they do not attend [drug court hearings], we give them plenty of opportunities. I explain and frame them: *If you do this through your private means, this would cost millions of pesos. This is free.* But if after several efforts we notice the person does not want to continue, we change the conditions [of the adjournment] ... You know, voluntariness is fundamental. But more like punishing? No, we have not seen that here. [Judge #1].

Therapeutic frames are led by judges, while other legal actors must engage and motivate the defendant to continue the treatment. In some cases, therapeutic frames involve verbal admonishments, where defendants are reminded of the costs of the treatment and the unique opportunity being provided to them.

Considering the limited sanctions available in drug courts, the rapport built by team members is critical to maintaining defendants in the program. Importantly, therapeutic framing requires being familiar with the defendants' background:

When we have stable judges throughout time— along with a prosecutor and a defender—they understand the cases thoroughly and know how to motivate participants. I think that is super important, and the therapeutic framing becomes more meaningful. [Case manager#7].

Therefore, having a stable team is critical for developing thorough therapeutic frameworks to keep participants in the program.

Team members recognize the trade-off involved in the limited number of tools available in drug courts to address noncompliance. For instance, a judge complained about the lack of control and the fact that defendants could drop out without further consequences:

Being admitted into the program is voluntary. But, [other people] do not understand that, though being admitted is voluntary, after that, my friend, this is an obligation. And *gringos* are pretty clear about this. [Judge #2].

The strong focus on voluntariness and defendants' agency results in a more limited control of defendants. Notably, this judge was also aware of the differences in the U.S. and Chilean drug court models when comparing the lack of consequences for defendants who do not comply with the program.

The limited tools to exercise control over defendants are also reflected in cases where team members lose track of participants and end up terminating them from the program:

[We terminate participants] when there is no alternative left. When, despite everything, the [defendant] does not attend. Or there is no family contact point, or the family does not cooperate. So, it comes to a situation where, despite all our efforts, the [case] is lost. So, sometimes I state that maybe we can rescue another adolescent who wants to take responsibility. And so, in that case, we remove the condition [drug court program].

[Prosecutor #6].

In other words, the lack of coercive measures limits the ability of team members to track defendants who are unresponsive to treatment or penal supervision.

Potential net-widening effects

Although drug courts are not considered a punitive response by team members, some courtroom actors warned that the model could have potential net-widening effects. This practice lies in the fact that defendants could settle their cases under the same

deferred prosecution program (adjournment in contemplation of dismissal) without requiring attendance at drug court treatment. As a public defender explains:

I think this is one of the shortcomings, and I will be super honest. To settle a case through an adjournment, we have to request preventive measures and schedule an interview to see if the person qualifies or not. We will have a hearing to accept the adjournment, where the person will sign the consent form [...]. A person who normally qualifies for drug courts can also access a [normal] adjournment. [Public Defender #6].

Considering this limitation, public defenders warned that it is the defense's role to examine each case when admitting defendants to the program thoroughly.

Similarly, a judge acknowledged that if cases are not thoroughly discussed before drug court admission, the dockets could be made up of *trifle cases*. He explained that in their court cases are carefully examined by the drug court team:

The problem, the flipside, is that [drug courts] are used for trifle cases, for cases where the defendant will not go back to court. Those are cases where the likelihood of committing another crime is almost nothing [...]. So, we try to avoid that. We try to use our resources for serious crimes, where the defendant is involved in recidivism dynamics, and we try to break that. [Judge #2].

In other words, team members must review each case—from a legal and clinical perspective—before admitting them to drug courts.

Discussion and conclusion

This study expands the debate on drug courts, *coercive penal care*, and punitiveness by examining an alternative model to the dominant U.S. drug court model. While drug courts were created in the U.S. and expanded throughout different continents, other countries have adapted the model and created variations of this policy (Nolan, 2009). Although the Chilean drug court model was inspired and influenced by U.S. advocates, its core elements represent a critical departure from the U.S. model, which has been subject to several critiques given its punitive measures.

Drug courts in Chile operate under a different logic than the U.S. model, in that they do not incorporate the use of jail sanctions to punish drug court defendants who do not comply with the conditions of the program. Findings from this study support this non-punitive approach since drug court team members have reached a consensus and developed legal strategies to not resume the legal procedure against defendants who voluntarily decide to drop out or are terminated from the program. This is a critical difference from studies conducted in U.S. settings, where jail and prison sanctions are framed as therapeutic responses (Burns & Peyrot, 2003; Tiger, 2012). Notably, some participants directly pointed to differences in the implementation of drug courts in the U.S. and Chile when describing the use of sanctions and zero-abstinence goals.

The focus on defendants' agency—and their right to decide to drop out without legal threats—reveals an emerging form of *coercive penal care* developed in Chilean drug courts. This form of *coercive penal care* recognizes the limits of the state when it comes to therapeutic treatment: it should be voluntary and free of legal coercion. The practices and strategies implemented in drug courts in Chile suggest that a better balance between punishment and rehabilitation is possible in problem-solving settings. However, the Chilean case also shows that potential effects—such as net widening—are also present in the implementation of drug court models that rely on less coercive measures to retain defendants in the program.

Furthermore, the focus on recovery beyond abstinence and the defendants' voluntariness are consistent with key elements of desistance frameworks. Drug court team members underscored that the recovery is a process and changes such as slowing down consumption or switching from hard to soft drugs are considered positive steps toward rehabilitation. This recovery process must always be supported by defendants' willingness to move forward with their treatment. These findings mark an important departure from the U.S. drug courts, where guidelines that stress abstinence and the RNR model are predominant frameworks to guide and assess drug courts.

The examination of the Chilean model reveals important tradeoffs involved in the model. First, the only tool available to address noncompliance is therapeutic frames, which team members recognize as a limited approach to deal with participants who lose contact with the drug court team and are terminated without consequences. Second, although drug court team members rejected the punitive nature of drug courts, some interviewees raised concerns regarding the potential net-widening effects and burdens associated with the drug court program. These potential net-widening effects are also tied to the legal structure of the program: for individuals who choose to access to treatment through drug courts, the counterfactual is to opt for the adjournment in contemplation of dismissal without the additional drug court conditions. I argue that the potential net-widening effects are inherent in models that merge public health and criminal justice, and more attention to the specific roles and standards that defense attorneys should follow is needed. Future studies should explore if this legal structure to operate alternatives to traditional adjudication (e.g., problem-solving courts, restorative justice) results in additional punitive dimensions for defendants.

Guided by Southern criminology, the results of this study call for comparative questions: What lesson (s) can the Global North learn from the implementation of a drug court model based in the Global South? As Omori et al. (2024) argue, rehabilitative practices developed by courtroom actors in problem-solving courts are limited by structural and organizational factors centered around punishment. The analysis of the Chilean model reveals that, although the graduation rates are lower than the U.S. average (National Drug Court Resource Center, 2022), almost half of the defendants graduated from the program in 2023 without the need to rely on the more coercive measures criticized in U.S. settings. While the U.S. drug court model is going through adjustments and innovations—including debates regarding the use of medical marijuana (see Sousa, 2025)—no discussion of the use of jail sanctions in the context of clinical treatment is taking place

among policymakers and lawmakers. I argue that a revision of the core components of the drug court model implemented in the U.S. can provide an opportunity to make meaningful changes in how criminal courts (either adversarial or problem-solving) dispose of and rehabilitate defendants. This revision is critical if problem-solving courts are poised to continue expanding and become a mainstream mechanism that blends rehabilitation and punishment in the courtroom. Importantly, this should also be discussed within the context of therapeutic jurisprudence, which is supposed to inform the structure and dynamics of drug courts.

This study has two important limitations. First, the perspectives included in this study were restricted to drug court team members—courtroom actors and case managers—officially assigned as team members by their agencies. Given the structure of the program, ad hoc legal actors can eventually attend a drug court hearing (e.g., a public defender taking over a colleague's hearing due to a scheduling conflict). The findings of this study do not reflect the perspectives of courtroom actors who occasionally participate in drug courts. Therefore, courtroom actors who are not assigned to drug courts (and thus might not be completely familiar with the model) could have different viewpoints, especially when it comes to punitiveness and the measures to assess progress and rehabilitation. Second, this study did not include the perspectives of defendants on their perceived punitive nature of drug courts and their comparison with traditional criminal courts. Including the perspectives of defendants is critical to continue expanding studies on *coercive penal care* in the courtroom.

Future research should focus on three key areas to continue exploring the potential punitive nature of drug courts and their therapeutic elements. First, future studies should adopt desistance approaches to understand the recovery process—including both substance abuse disorders and crime—in the context of drug courts. Second, more studies focused on the stability of courtroom actors and their role in implementing therapeutic approaches in non-punitive settings are needed. Finally, more research examining the evolving role of defendants' voluntariness—when admitted to drug court, and how it changes over time during the program—is a critical step to understanding defendants' experiences and how *coercive penal care* is perceived by defendants.

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ORCID iD

Sebastián Galleguillos  <https://orcid.org/0000-0001-5772-637X>

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Notes

1. The legal requirements are established in article 238 of the Criminal Procedural Code.
2. In Chile, crimes punished by up to five years of incarceration can be substituted with non-custodial sanctions if certain requirements are met (see Galleguillos et al., 2024).
3. Considering the limitations of administrative data, it is not possible to determine graduation rates but rather report the proportion of graduates versus nongraduates per year.
4. Given the small size of some jurisdictions, I cannot provide more details to protect the anonymity of my participants.
5. The Public Prosecutor's Office reported 59 prosecutors, including nine coordinators. The Public Defender's Office reported 35 individuals assigned to drug courts, including 11 coordinators. Finally, the National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption reported 37 case managers assigned to drug courts.

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Sebastián Galleguillos is an assistant professor in the Sociology and Criminology Department at the University of Massachusetts Boston. His research interests include criminal courts and sentencing, comparative criminology, and alternatives to incarceration.