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A Policy Analysis of South Carolina Drug Court Legislation: H. 3322 § 302: Drug Court Program Act (2019)

Mae Chinnnes
mchinnnes@email.sc.edu

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A Policy Analysis of South Carolina Drug Court Legislation:

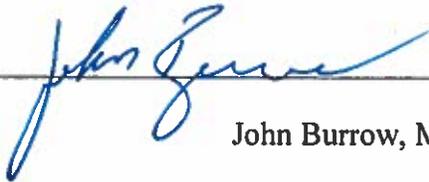
H. 3322 § 302: Drug Court Program Act (2019)

By

Mae Chinnes

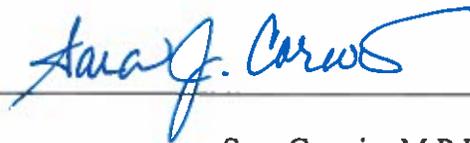
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Approved:



John Burrow, M.A., J.D., Ph.D.

Director of Thesis



Sara Corwin, M.P.H., Ph.D.

Second Reader

Dr. Steve Lynn, Dean
For South Carolina Honors College

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Abstract

The purpose of this thesis is to examine a piece of drug court legislation currently being considered by the South Carolina Legislature, H. 3322 § 302. An overview of drug criminalization in the United States, its impact, and drug courts are provided. This is followed by a review of the literature on the key programmatic components of drug court best practices, including: target population, incentives and sanctions, management team, and duration. An example analysis of Florida's Thirteenth Judicial Circuit Drug Court Program policies proceeds the analysis of H. 3322. Parameters of successful drug court legislation and program outcomes are defined and the current landscape of South Carolina drug courts as well as the legislative history of H. 3322 are outlined. Analysis of drug court best practices in H. 3322 § 302 are supplemented by stakeholder interviews. The legislative analysis also includes the impacts of H. 3322 on long-term outcomes such as recidivism, drug dependency, and socioeconomic costs. Finally, the likelihood of passage of H. 3322 and alternate policy intervention frameworks are discussed. Policy frameworks included in the discussion are: reentry courts, community-based treatment and criminal justice system diversion, and decriminalization of illicit substances.

Chapter 1: Introduction

Recent national attention to the US opioid crisis has led to increased discussion on drug dependency and the effectiveness of its current treatment by the criminal justice system. In 2017, 70,237 deaths in the US were attributed to drug overdose, 47,600 (two thirds) of which were due to opioids (CDC, 2019). Of the 20.2 million American adults who have a substance use disorder, nearly 8 million suffer from a comorbid mental illness (National Association of Drug Court Professionals¹, 2019). The current criminalization of drug-dependent persons has led to an incarcerated population of nearly half a million people convicted of nonviolent drug possession or trafficking (frequently used to fund dependency), comprising a fifth of all incarcerated people in America and causing what many describe as a mass incarceration crisis in the U.S. (Sawyer & Wagner, 2018).

Research on best practices in drug dependence treatment suggests that incarceration has little to no impact on reducing drug dependence and related crimes or deterring offenders from recidivism² (Bennett et al., 2018). This is evidenced by the increase in arrestees with opiates in their system from 2000 to 2013 and the current 50% of inmates who meet DSM-IV criteria for drug abuse or dependence, suggesting that the criminal justice system is not an adequate treatment provider (Center for Prisoner Health and Human Rights, n.d.). The existing 61% of non-violent felony defendants in state courts with prior conviction records lead researchers to

¹ In the pages that follow, the National Association of Drug Court Professionals will be referred to by its acronym—NADCP.

² The National Institute of Justice (n.d.) defines recidivism as “a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime. . . . Recidivism is measured by criminal acts that resulted in rearrest, reconviction or return to prison with or without a new sentence during a three-year period following the prisoner's release.”

believe that treatment through the criminal justice system does not prevent drug offenders from recidivating (Warren, 2007).

The socioeconomic cost of imprisoning drug-dependent offenders is also high. The US spends \$80 billion annually on incarceration (NADCP, 2019). State spending on incarceration has ballooned over 200% in a mere two decades. This is more than any other increase in state budgets, including: higher education (3%), Medicaid (47%), and secondary and elementary education (55%) (Warren, 2007; U.S. Department of Education, 2016). Lost productivity costs the average incarcerated person \$35,346 per year (Anderson, 1999). This figure does not account for collateral consequences of imprisoning drug offenders, including additional lost productivity post-incarceration as former inmates are often denied access to employment, resulting in increased reliance on already-strained social safety net programs. Additionally, increased morbidity and mortality rates among currently and formerly incarcerated individuals, particularly those who are drug-dependent, contributes to the inflated costs of medical treatment in the US which is presently 800% higher than the 1960s (Gruber & Newquist, 2011). Responding to drug dependency with incarceration and socioeconomically burdensome felony criminal records is neither evidence-based nor socially optimal.

The high incarceration rate of drug dependent persons is especially notable in South Carolina. At 754 incarcerated individuals per 100,000, South Carolina exceeds the national incarceration rate of 698 (Prison Policy Initiative, n.d.). “Dangerous Drugs” (or the distribution, sale, possession or trafficking of any illicit drug or narcotic equipment) was the second leading offense among incarcerated individuals supervised by the South Carolina Department of Corrections (SCDC) in 2018 and it accounts for 16% of inmates convicted in the state (SCDC, 2018). The annual cost per inmate in South Carolina was \$23,712 in 2018, including State

(accounting for \$21,756 per inmate), Federal, and Special Revenues (SCDC, 2018). Additionally, SCDC had a 22.3% recidivism rate among all offenders in 2015. The concentration of incarcerated drug dependent persons in South Carolina makes the state a compelling case study of the impact of drug courts on drug dependency and related recidivism and socioeconomic cost.

In recent decades, drug courts have proven to be a feasible and more ‘successful’ alternative to incarceration. In 2018, the US Department of Justice (DOJ) estimated “There are more than 3,100 drug courts across the United States, half of which are adult treatment drug courts.” After 18 months of participation and treatment, significant percentages of drug court participants report less frequent drug use, no relapse, and lower rates of positive drug tests when compared to nonparticipants (Bhati et al., 2011). Further, NADCP has documented the success of drug courts in reducing recidivism and socioeconomic cost in noting that “[n]ationwide, 75% of Drug Court graduates remain arrest free at least two years after leaving the program. [Additionally,] drug courts produce cost savings ranging from \$3,000 to \$13,000 per participant. These cost savings reflect reduced prison costs, reduced revolving door arrests, trials and reduced victimization” (NADCP, 2019).

Under current South Carolina law, drug courts are administered independently by each judicial circuit and operate county-by-county with no standardization across the state. Some circuits offer only adult drug courts (e.g. Circuit 2) whereas other circuits offer a combination of multiple types of drug courts (e.g. Circuit 1). There are currently 20 adult drug courts across 16 judicial circuits and 11 juvenile drug courts across 10 judicial circuits (National Drug Court Resource Center, 2019). The impact of drug court participation with regards to drug dependency,

drug-related recidivism, and socioeconomic cost is also inconsistent across existing drug court programs, with limited data provided by these programs.

Omnibus legislation, H. 3322, introduced in the 123rd Congress of the South Carolina Legislature, includes § 302: Drug Court Program Act (2019). This legislation would standardize the procedures and regulations of existing drug courts in South Carolina while providing for the establishment and regulation of both adult and juvenile drug courts in all SC judicial circuits. This legislation was preceded by S. 163 of the 122nd Congress, the Drug Court Program Act, which was not passed but was amended and refiled as part of the omnibus H. 3322. To date, there has been no research or evaluation of this legislation as it has been filed and amended.

The purpose of this thesis is to evaluate H. 3322 § 302: Drug Court Program of the 123rd Congress of the South Carolina Legislature based on the inclusion of drug court best practices and the projected impact on long-term outcomes. Drug court best practices are defined by key components including: target population, incentives and sanctions, management team, and program duration. The long-term outcomes evaluated include drug dependency, drug-related recidivism, and socioeconomic costs. The likelihood of the bill's passage will also be discussed as well as alternate policy intervention frameworks.

Chapter 2: Literature Review

Introduction & Purpose

There are no mandated federal guidelines dictating the purpose, key components, or implementation of drug courts. The U.S. Department of Justice has provided federal funding for the development of drug court best practice standards by the NADCP. However, the status of these standards as guidelines must be stressed. States and individual judicial circuits have the discretion to define and create their own standards for drug courts. The lack of federal and state regulations on drug courts creates significant variations in the realized practices of operating drug courts. The current literature on drug court best practices offers diverse and sometimes conflicting analyses and recommendations regarding existing standards/guidelines at the federal, state, and individual programmatic levels.

The purpose of this literature review is threefold: first, to survey the landscape of existing literature on drug court best practices by defining drug courts and their purposes, overviewing the history of drug courts, and outlining key components identified and in contention in the literature. Second, to posit an example of the interpretation of these components by a state and the implementation of these components by an individual judicial circuit drug court to examine discrepancies that arise between best practices, state policy, and individual drug court implementation/practice. Third, to provide an overview of the current state of drug courts in South Carolina, their compliance with drug court best practices, and the legislative history of H. 3322 that led to its introduction in the South Carolina Legislature. The literature will conclude by identifying defining parameters of successful drug court legislation using program outcomes.

Overview of Drug Courts

Definition & purpose.

Without a standardized framework (on the federal or state level) to define drug courts or their purpose, there is substantial variation in the proffered reasons for the existence and purpose of drug courts. However, there are some elements of drug courts that seem to be consistent within the research literature, though no fixed definition or stated purpose is identified. Drug courts are frequently referred to as a problem-solving court, offering defendants the option to participate in an intensive drug treatment program under judicial supervision as an alternative to incarceration for crimes typically directly associated with drug abuse. This method of combatting the criminalization of drug addiction is one intervention among several (including community-based treatment programs and decriminalization) aimed two-fold at reducing convictions and recidivism while treating an increasingly visible public health crisis.

Drug courts operate as a separate entity within the traditional judicial circuit, though intervention in some drug court systems occurs post-adjudication¹ and in others, pre-adjudication² (National Institute of Justice, n.d.; National Drug Court Resource Center, 2019). Generally, after successful completion of a drug court program, defendants in post-adjudication models receive waived, reduced, deferred, suspended, or split prison sentences and possible record expungement while those in a pre-adjudication models are not prosecuted further and criminal charges are withheld or dismissed (King & Pasquarella, 2009).

¹ Post-Adjudication drug court programs are structured to admit defendants into the drug court program as an alternative to a sentence of incarceration after being convicted (National Institute of Justice, n.d.; National Drug Court Resource Center, 2019).

² Pre-Adjudication drug court programs are structured to admit defendants who have not yet been convicted and are diverted from regular criminal court entirely (National Institute of Justice, n.d.; National Drug Court Resource Center, 2019).

Program elements.***Target population.***

Identifying a target population (and actually serving that population once identified) is one of the most-discussed and continuously evolving elements of drug court best practices. Defendants identified as potential candidates for a drug court program are, generally, those who are charged with drug possession or another non-violent offense, do not have a violent criminal history, and test positive for drugs or have a history of drug addiction (National Institute of Justice, n.d.). In order to receive federal funding through the Bureau of Justice Assistance, drug courts must exclude violent offenders (current or prior) from participating in the program. King & Pasquarella (2009) question the “consequences for the potential overall diversionary impact of the programs” this policy produces by excluding those offenders who possessed a weapon at the time of arrest (regardless of whether it was present or used) and those convicted of violent crimes long past and unrelated to current drug addiction. This barrier to accessing drug courts for individuals who are otherwise strong candidates reduces the capacity of drug court programs to reduce drug addiction and related crime. The National Association of Drug Court Professionals (NADCP) (2018) also recommends “offenders charged with drug dealing or those with violence histories are not excluded automatically from participation in the Drug Court.”

NADCP (2018) describes the target population of drug court programs as “high-risk, high-need.” This means that offenders best suited for drug court programs are currently addicted to illicit drugs and are “...at a substantial risk for reoffending or failing to complete a less intensive disposition, such as a standard probation or pretrial supervision” (NADCP, 2018). Peters and Peyton (1998) recommend that drug court screening should not automatically exclude individuals with mental health and other potentially disabling disorders unless such disorders

inhibit meaningful participation in the drug court, are beyond the treatment capacity of the drug court, and/or pose a public safety concern. The recommendation for inclusion of mentally ill offenders in drug court programs has remained a consistent part of the literature in the following decades (Peters & Peyton, 1998; Peters, 2008; NADCP 2018). Drug addicted offenders frequently demonstrate co-occurring disorders, such as mental illness, and drug court programs must be adaptable to create an integrated approach which addresses the needs of participants with co-occurring disorders (Peters, 2008).

While most drug courts target adults who are ages 18 and older, many states have adopted separate juvenile drug courts in an effort to identify and treat those showing early signs of drug addiction before they begin committing drug-related or other crimes as an adult. “In addition to substance use treatment, they typically take into account family involvement, coordination with school systems, and community partnerships” (Volk, 2018). Judicial circuits administering drug court programs vary in the type(s) of drug court(s) they implement, some offering only adult or only juvenile programs, and others offering both types of drug court. Most recent data in drug court types in operation reports that in 2015, of the 3,000 operating drug courts in the U.S., 1,558 served adult offenders while 409 courts served juveniles¹ (National Criminal Justice Reference Service, 2017).

Identifying a target population requires both a “screening” and “assessment” phase. “Screening determines eligibility and typically takes place soon after arrest [whereas]...[a]ssessment determines suitability for specific types and intensity of services, and...occurs after the offender is admitted into the drug court program” (Knight, Flynn, &

¹ The remaining types of drug courts include DWI (284), Family (312), Veterans (306), Tribal (138), Co-occurring (70), and Reentry (29) (National Criminal Justice Reference Service, 2017).

Simpson, 2008). Multiple sources of information, including interviews, self-report instruments, and review of records, should be used in conjunction with an initial drug test at arrest for screening and assessment purposes. Formal screening and assessment protocols are frequently absent from drug court programs (Picard-Fritsche, 2010), reducing the accuracy, efficiency, and cost-effectiveness of target population identification.

Drug court best practices emphasize the importance of nondiscriminatory participant eligibility and retention. NADCP standards (2018) recommend drug courts take measures to increase the representation of groups that have “historically experienced discrimination” and ensure their retention in the program. Despite these guidelines, African American and Hispanic populations represent a lower proportion of drug court participants compared to demographics of arrestee, probation, and incarcerated populations. Additionally, female, African American and Hispanic drug court participants graduate at a substantially lower rate than male participants and those of other racial and ethnic backgrounds (Janku & Price, n.d.; McKean & Warren-Gordon, 2011). However, there is inconsistency in the literature about the proportional severity of these disparities and a 2013 report by Marlowe found that socioeconomic status and primary drug of use are stronger predictors of eligibility and retention than social factors such as sex and race. Marlowe (2013) posits that social factors are only correlational predictors and not indicative of discriminatory practices. Regardless, cultural competency and gender responsiveness are critical to fair and equitable identification of drug court participants.

Incentives & sanctions.

A system of incentives and sanctions is generally implemented to ensure participant compliance with the terms of the program. Incentives and sanctions are recommended to be both progressive and measured, meaning that they increase in magnitude as the incentivized or

sanctioned behavior continues and that the magnitude of the incentive or sanction is equivalent to that of the behavior. There is some disagreement about the ethical soundness of an “incentives and sanctions” system in treating drug addiction. Where a public health perspective may question the principle of punishing relapse (a frequent side effect of the disease during treatment) with court sanctions, some criminal justice professionals hold the perspective that “treatment should be its own reward [and] avoiding a criminal charge should be incentive enough” (Marlowe, 2012). King and Pasquarella (2009) find that “for a drug court system to be a viable diversion instrument for individuals who have a history of substance abuse, it must factor relapse and a flexible cadre of judicial responses into its design.” Discriminatory administering of incentives and sanctions by the judge on the bases of sex, race, sexual orientation, ability, or some other social determinant is also of concern (NADCP, 2018), though involvement of other drug court professionals (treatment experts, social workers, defense attorneys, etc.) as well as the participant may mitigate this risk.

The role of the judge in administering incentives and sanctions is critical. It is the judge’s job to administer consequences for participants’ behavior that are “predictable, fair, consistent, and administered in accordance with evidence-based principles of effective behavior modification” (National Drug Court Institute, 2019). These principles are deemed necessary for participants to react favorably to, and learn from, the implementation of sanctions or withholding of incentives. Marlowe (2012) notes in his report to the National Drug Court Institute (NDCI) that participants should be given the opportunity to voice their opinion regarding the administering of incentives and sanctions during hearings, giving them the chance to self-advocate and bringing them into the decision-making process. This emphasis on participant input

may improve drug addiction-related health outcomes when compared to incarcerated groups without input on addiction treatment.

NDCI (2019) offers a list of incentives ranging from verbal praise, small tangible or symbolic rewards, and recognition in court (low level) to reduced supervision requirements, reduced community restrictions, and supervised social gatherings (moderate level) to travel privileges, program phase progression or commencement, and legal incentives (high level). NDCI's list of sanctions range from low (such as verbal admonishments, letters of apology, and journaling), moderate (such as increased supervision requirements, monetary fines, and community service), and high (such as electronic surveillance, short jail sentences, and program termination).

There is neither a nationally standardized list of incentives and sanctions nor behavior-type implementation tables. States, or individual judicial circuits where statewide standards do not exist, vary in the level of detail they provide drug courts for the types of incentives and sanctions to apply and the appropriate circumstances in which to apply them (i.e. magnitude). For example, Iowa's Eighth Judicial District provides a public record of incentives and sanctions in its drug court program. In Iowa's Eighth Judicial District, incentives and sanctions are loosely defined by how they are perceived by the participant and may be implemented on subjective basis of making "satisfactory progress" (Eighth Judicial District Department of Correctional Services Policies and Procedures, 2015). A briefly descriptive list of incentive and sanction types is provided, but no magnitude is assigned and no specific action resulting in a given incentive or sanction is provided.

By contrast, the Palm Beach County Drug Court Office (2012) has published a table of sanctions for its drug court program wherein specific behaviors, such as a missed counseling

session, result in specific, pre-defined sanctions, such as a delay in program phase advancement. This tabular, cause-effect model for sanctions may deter judges from discriminatory administration of sanctions but does not give judges the discretionary power to consider special circumstances of individual cases. It should be noted that this table does not include any mention of incentives, recognized to be equally, if not more, important in promoting participant compliance with drug court programming and rules (Marlowe, 2012). A comparative summary of incentives and sanctions guidelines for the Iowa Eighth Judicial District and Palm Beach County, Florida drug court programs can be found in Table 1 below:

Table 1: Comparison of incentives and sanctions guidelines in Iowa Eighth Judicial District and Palm Beach County, Florida drug court programs

Drug Court Program Location	Iowa Eighth Judicial District	Palm Beach County, FL
Incentives defined?	Yes	No
List of incentives provided?	Yes	No
Specific behavior associated with incentive administration?	No	No
Incentives Progressive in Magnitude?	No	No
Sanctions defined?	Yes	No
List of sanctions provided?	Yes	Yes
Specific behavior associated with sanction administration?	No	Yes
Incentives Progressive in Magnitude?	No	Yes

(Eighth Judicial District Department of Correctional Services Policies and Procedures, 2015; Palm Beach County Drug Court Office, 2012)

Management team.

Drug courts require continuous interaction between judicial, social work, and treatment professionals. The National Institute of Justice (2012) describes the management of a drug court

system as “a nonadversarial and multidisciplinary team including judges, prosecutors, defense attorneys, community corrections, social workers and treatment service professionals.” The team must ensure the compliance of participants with the requirements of the program (appearance at all scheduled court and treatment dates, frequent drug tests, etc.) as well as the continuity of drug treatment care received by participants over the course of the program. It is the responsibility of the management team to assist participants in successfully completing the program by remaining drug and arrest free for a period of time with the hope of permanent cessation of drug use and crime. With a theoretical foundation in therapeutic jurisprudence¹, drug courts and their management and operations teams must perform “in a manner that encourages health and positive growth” (National Institute of Justice, n.d.). Exercising this principle can be challenging for a team that sometimes manages involuntary or coerced participants (the constitutionality of which was upheld in *Sell v. United States* (2003) (Alden et al., 2004).

Duration.

There is inconsistency in the length of drug court programs from entrance to graduation across the scope of practice. King and Pasquarella (2009) suggest that the typical drug court program can run anywhere from six months to one year and that many participants (likely due to the imposition of sanctions for failure to comply with program rules of sobriety and/or abstinence from rearrest) remain in the program for longer. Alden et al. (2004) recommend participants spend a minimum of one year in treatment with the duration of the drug court program coinciding with the length of treatment. They also argue that the intensity or level of care administered may be reduced over the course of the program. The National Drug Court

¹ Therapeutic Jurisprudence refers to a theoretical model which recognizes, analyzes, and makes recommendations regarding the influence (therapeutic/helpful or anti-therapeutic/unhelpful) which laws and policies have on behavioral health (Perlin, Spencer, Stobbs, Vols, & Wexler, 2016).

Resource Center (2019) suggests that a successful drug court program may require participation over multiple years “to establish and maintain long-term recovery strategies.” Despite an average program length between 12 and 18 months, most drug court participants require an average 16 months of participation to meet graduation requirements, likely due in part to the average requirement of 8 months “clean and sober” for graduation (Roman, Rossman, & Zweig, 2011). There is no quantifiable minimum length of time established in the literature for participation in a drug court program to successfully achieve long-term recovery from drug use and reduced risk of recidivism; rather, there are currently only varying minimum participation lengths and some evidence to suggest that successful program completion requires longer participation than the minimum requirement (King and Pasquarella, 2009; Alden et al., 2004; National Drug Court Resource Center (n.d.); Roman, Rossman, & Zweig, 2011).

History & federal funding.

The first drug court in the U.S. was established in 1989 in Miami-Dade County, Florida (King & Pasquarella, 2009). Treating drug addiction as a criminal act (through criminalization of possession and distribution of drugs as well as other nonviolent charges associated with drug addiction) meant that the criminal justice system needed to incorporate treatment as a means of rehabilitating the droves of offenders addicted to drugs. In short, by the late 1980s, drug-addicted offenders represented an overwhelming, costly, time-consuming proportion of arrestees, convicts, and incarceration populations (Lurigio, 2008). Rather than combatting drug crimes on the front end (drug supply), drug courts were designed to address the back-end of drug crimes through treatment addiction. What began as a treatment system strictly for adult offenders expanded over time to include juvenile drug courts, DUI/DWI courts, family drug courts, veterans treatment courts, mental health courts, and others (National Drug Court Resource

Center, 2019; NADCP, 2018). The first juvenile drug court in the U.S. was established in Key West, Florida in 1993 (National Institute of Justice, n.d.). NADCP developed its first set of guidelines for drug court best practices in 1997, establishing six key components¹ of drug courts (National Institute of Justice, n.d.).

The number of drug courts in the U.S. has continuously grown over time. Less than a decade from the establishment of the first drug court in Miami-Dade County, Florida in 1989, there were 370 drug courts established in the U.S. in 1997 (Lurigio, 2008). In 2004, Alden and colleagues reported 1,781 drug courts were operating in the U.S. By 2009, 1,600 drug courts existed in the U.S. (King & Pasquarella, 2009) and by 2011, the number had jumped to 2,500 drug courts (Office of National Drug Control Policy, 2011). The most recent reports estimate 3,100 total drug courts in operation in the U.S. (National Criminal Justice Reference Service, 2018).

Federal funding and informational resources for drug courts have expanded over the past two decades, though no federal legislation standardizing the implementation of these funds or the general practice of drug courts exists. The Omnibus Crime Control and Safe Streets Act of 1968 first authorized the allocation and distribution of federal funding for drug courts of various types (including both adult and juvenile). In 2011, the Drug Court Reauthorization Act was introduced to amend the 1968 Omnibus legislation to further authorize drug court appropriations and modify grant application and distribution requirements. The Violent Crime Control and Law Enforcement Act of 1994 and the Drug Courts Program Office (established in 1995 and operating under the U.S. Department of Justice Office of Justice Programs) provided \$56 million

¹ NADCP's original six key components of drug courts were: "collaborative, non-adversarial, outcome driven court processing; early identification of eligible offenders; drug treatment integrated into criminal justice case processing; urine testing; judicial monitoring; and the use of graduated sanctions/rewards" (National Institute of Justice, n.d.).

in federal funding for “the initial planning, implementation, and expansion of drug courts throughout the country” (Lurigio, 2008). The Juvenile Accountability Incentive Block Grants (JAIBG), which serves to establish juvenile drug courts, is administered by the U.S. Department of Justice Office of Justice Programs Office of Juvenile Justice and Delinquency Prevention and was initially funded in fiscal year 1998 (Cooper, 2001). Currently, the Drug Court Discretionary Grant (DCDG) Program is the primary source of federal money for of drug court program development and implementation. In 2017, the U.S. Department of Justice included \$43 million in authorized funding for the DCDG Program (Sacco, 2018).

Given the historical context of the development of drug courts and the steadily growing support of these programs in the U.S. over several decades, standardized regulation is imperative. The impact of absent federal or state mandates for drug court program standards can be seen in inconsistencies between existing state legislation, state standards, and individual program implementation. An analysis of an example of drug court state standards and their implementation by an individual judicial circuit is discussed in the next section. Florida’s Thirteenth Judicial Circuit Drug Court Program was chosen due to the availability of public records on the Florida Code regarding drug courts, related local policies, and the program’s procedural manual. The method of examination of these policy and implementation documents can then be applied to the current landscape of drug courts and state legislation in South Carolina.

Example Legislative & Programmatic Model: Florida’s Thirteenth Judicial Circuit.

State legislation.

In 2001, § 397.334, Treatment-based drug court programs, was added to Title XXIX of the Florida Code. The statute was preceded by § 397.333, Statewide Drug Policy Advisory

Council which was implemented in 1999. The purpose of the Council was to analyze and make recommendations to the Governor and Legislature regarding the problem of drug abuse in Florida, as well as initiate programs to treat drug abuse and secure their funding. § 397.333(3)(k) of the 2019 statute specifies that the Council “Recommend to the Governor and the Legislature ways to expand and fund drug courts, which have proven effective in the state’s drug control strategy.” The resultant Florida Statute 397.334(1) (2019) allows, (but does not mandate) “Each county [to] fund a treatment-based drug court program under which persons in the justice system assessed with a substance abuse problem will be processed in such a manner as to appropriately address the severity of the identified substance abuse problem through treatment services tailored to the individual needs of the participant.”

§§ 397.334(2) and (3) (2019) allow counties to establish both voluntary, pretrial treatment-based drug court programs and involuntary (i.e. court ordered, though the defendant must still agree to enter the program), post-adjudicatory treatment-based drug court programs “as a condition of probation or community control.” § 397.334(4) (2019) sanctions the use of therapeutic jurisprudence principles and “10 key components¹” of drug court programs. § 397.334(5) (2019) specifies that sanctions for noncompliance “may include, but [are] not limited to, placement in a substance abuse treatment program offered by a licensed service provider...or in a jail-based treatment program or serving a period of secure detention...if a child or a period of incarceration within the time limits established for contempt of court if an adult.” Importantly,

¹ The “10 key components” include: integration of alcohol and other drug treatment services within the justice system, use of a nonadversarial approach protecting participants’ due process rights, early participant identification and program placement, continuity of drug treatment care, frequent drug testing, a “coordinated strategy” for compliance response (i.e. sanctions), ongoing judicial interaction with participants, monitoring and evaluation of program goals and effectiveness, continuing education (i.e. utilizing best practices), and community and public agency partnership.(Section 397.334(4), 2019)

§ 397.334(5) (2019) also requires sanctions to be provided to participants in writing before participants agree to enter the drug court program. Other notable components of the Florida Statute include § 397.334(6)(b) (2019) which requires each circuit to file an annual report to the Office of State Courts Administrator of

...sufficient client-level and programmatic data...Client-level data include primary offenses that resulted in the drug court referral or sentence, treatment compliance, completion status and reasons for failure to complete, offenses committed during treatment and the sanctions imposed, frequency of court appearances, and units of service. Programmatic data include referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.

Given that the statute defers the implementation of drug court programs to individual judicial circuits rather than providing for a statewide drug court system, this collection of data is critical to ensure that drug court programs across all Florida judicial circuits meet the standards set in section 397.334, Florida Statutes.

Thirteenth Judicial Circuit administrative order.

Florida's Thirteenth Judicial Circuit, located in Hillsborough County, established its drug court program in 1992 under Title XXIX § 397.334, Florida Statutes (Admin. Order S-2017-037). The Thirteenth Judicial Circuit administers both a pre-trial and a post-adjudicatory adult drug court program. Eligibility requirements for the pre-trial intervention include charge of a nonviolent felony, identification of drug addiction, and no prior felony convictions (Admin. Order S-2017-037). Exclusion of violent offenders (who often fall into the high-risk, high-need category) may prevent a key segment of drug dependent offenders from accessing treatment and rehabilitation. Defendants are not required to plead guilty or *nolo contendere* to the charges which led them to entry into the drug court program and are eligible for dismissal of charges upon successful completion of the program (Admin. Order S-2017-037). This provision of the

program is critical to ensuring that drug dependent individuals are not precluded from participation due to doubts about their ability to complete the program which would result in a guilty plea criminal record.

By contrast, the post-adjudicatory drug court program is designed to manage offenders charged with “All third degree felony drug offenses and all second degree felony purchase or possession of a controlled substance cases... along with any accompanying non-violent felony offenses and misdemeanor offenses” (Admin. Order S-2017-037). Eligibility requirements for participants in the post-adjudicatory drug court program include identification of drug addiction by a court substance abuse evaluator, a maximum sixty points on the “Criminal Punishment Code scoresheet¹,” current charge of a nonviolent felony, expressed desire to participate in the drug court program, and a plea of guilty or *nolo contendere* (i.e. charges are not contested) (Admin. Order S-2017-037). Any new violent felony charge received during the course of drug court participation is a violation of parole and will result in immediate dismissal from the program and transfer to a standard division criminal court (Admin. Order S-2017-037).

Potential participants are allowed a maximum of 21 days (though the judge may choose to allow less or no additional time) after arraignment to choose whether to submit a not-guilty plea and transfer the case to a standard criminal division court or plead guilty and be sentenced to the drug court program (Admin. Order S-2017-037). The option to request additional time to make a decision reduces pressure placed on the defendant to make an immediate plea decision. While requiring a guilty plea to participate in the post-adjudicatory drug court program may prevent otherwise eligible participants from choosing to seek treatment, the allowance of time to consider a plea may persuade such participants that admission into the program will provide

¹ The “Criminal Punishment Code scoresheet” quantifies the total weight of prior offenses by number and type/severity (Admin. Order S-2017-037).

better outcomes in both health and criminal record than the risk of a guilty verdict and prison sentencing.

Florida Adult Drug Court Best Practice Standards & Thirteenth Judicial Circuit procedural manuals.

The Thirteenth Judicial Circuit of Florida's drug court program integrates much of the language utilized in the relevant Florida statute as well as the Thirteenth Judicial Circuit's Administrative Order. The Florida Adult Drug Court Best Practice Standards, based on the NADCP best practice standards and implemented in the Thirteenth Judicial Circuit, are designed to standardize all drug court programs across the state of Florida. These standards are mentioned in the procedural manuals of the Thirteenth Judicial Circuit's pre-adjudication, post-adjudication, family dependency, and juvenile drug court programs. The procedural manuals use much of the same language in defining the ten key components of problem solving courts, team member rules, incentives and sanctions, and drug testing. Discussions of these elements can be applied across all drug court programs in the Thirteenth Judicial Circuit. Differences in required team members, eligibility criteria, screening referral process, court phases, court staffing, treatment progress reporting procedure, and discharge procedures are outlined in the procedural manuals. For the purpose of this literature review, the pre-trial intervention program manual will be referenced in discussion of these components.

Ten key components.

The "Ten Key Components of Drug Court" mirror those of the state statute. These include: integration of alcohol and drug treatment services with justice system case processing, use of a non-adversarial approach and protection of due process rights, early identification and prompt placement in the drug court program, continuity of care, frequent drug testing, participant

compliance response (i.e. incentives and sanctions), ongoing judicial interaction with participants, monitoring and evaluation of program goal achievement, continuing best-practice education on drug courts, and partnership with public agencies and community-based organizations (Florida Thirteenth Judicial Circuit, 2018). Consistency in transcription of these pillars of drug court programs from the Florida Code to individual, circuit-level drug courts is critical to ensuring all programs are basically cohesive. Discrepancies in the language between the Statute and individual program manuals can lead, as shown in other sections, to differences in intended versus implemented practice.

Target population.

Florida Adult Drug Court Best Practice Standards identify high-risk, high-need offenders as the target population of all Florida problem-solving courts (Supreme Court of the State of Florida, 2017). The Standards require the use of validated risk and assessment tools. In selecting a target population, the Standards specify that violent criminal histories and co-occurring mental health problems should not automatically disqualify potential drug court program participants (Supreme Court of the State of Florida, 2017). Despite this recommendation, the Thirteenth Judicial Circuit's pre-adjudication program deems defendants previously convicted of a felony ineligible for the drug court program (Florida Thirteenth Judicial Circuit, 2018).

The State Standards recognize the role of discrimination in disadvantaging marginalized communities in the drug court program and, therefore, require that drug courts implement equivalent practices in access (i.e. eligibility), retention (i.e. program completion), treatment (i.e. care level and treatment quality), incentives and sanctions, dispositions, and team training (i.e. cultural competency). In the pre-trial intervention manual, the only mention of equivalent practices is the required competency that team members are "[k]nowledgeable of gender, age,

and cultural issues that may impact participant's success" (Florida Thirteenth Judicial Circuit, 2018).

The screening process is only briefly outlined in the pre-adjudicatory intervention manual. The manual specifies that defendants must be evaluated by a "drug court specialist" for eligibility (Florida Thirteenth Judicial Circuit, 2018). The judge may set requirements for probation/participation on a case-by-case basis and those requirements may include frequent drug testing and support group attendance (Florida Thirteenth Judicial Circuit, 2018). Screening procedures are not outlined in the State Standards.

Incentives & sanctions.

Florida Adult Drug Court Best Practice Standards require that incentives and sanctions be outlined in writing and provided to participants prior to program admission; however, the Standards also allows the management team to exercise discretion in modifying incentives and sanctions on a case-by-case basis (Supreme Court of the State of Florida, 2017). Other provisions of the Standards include: defendants must be given the opportunity to be heard prior to the administering of incentives or sanctions; sanctions must be progressive, finite in duration, and established in a formal protocol; sanctions are not administered for lack of responsivity to treatment if otherwise compliant with the drug court program; equal emphasis is placed on the administering of diverse and progressive incentives as sanctions; phase promotion is an incentive for achievement of "realistic and defined behavioral goals" such as employment, education, and peer support group attendance; jail sanctions should be no longer than five days as longer durations "have little therapeutic benefit," highlighting a focus on treatment rather than punishment; and termination from the program is not automatic for failure to cease substance use if otherwise compliant in the program (Supreme Court of the State of Florida, 2017). The

Standards do not define at which phase drug and alcohol tests frequency should be reduced and only specify that the reduction should be “clinically appropriate” (Supreme Court of the State of Florida, 2017).

The pre-adjudication intervention manual includes examples of progressive incentives such as “in court encouragement and recognition, travel privileges out of county or out of state, and early termination of probation/supervision” (Florida Thirteenth Judicial Circuit, 2018). Examples of sanctions include “admonishment from the judge, increased frequency of random drug screens, and extended probation” (Supreme Court of the State of Florida, 2017). The pre-adjudication intervention manual has not yet adopted program phases but recognizes their role in “marking substantial progress towards recovery...[through] specified treatment objectives, therapeutic and rehabilitative activities and specific requirements for advancement into the next phase” (Florida Thirteenth Judicial Circuit, 2018).

Management team.

Florida Adult Drug Court Best Practice Standards state that the judge must stay up-to-date on drug court best practices, participate in team meetings, interact frequently (every two weeks during the first phase of the program and reducing to every four weeks in the final phase) and respectfully with participants, and consider the input of other team members. The judge should preside over the drug court for at least two consecutive years and maintain a consistent docket to ensure continuity of care for participants (Supreme Court of the State of Florida, 2017). The pre-adjudication intervention manual mentions the leadership role of the judge while maintaining a non-adversarial atmosphere, aiding participant compliance with the program (Florida Thirteenth Judicial Circuit, 2018).

Other team members identified by the Florida Adult Drug Court Best Practice Standards include a program coordinator, prosecutor, defense counsel, treatment representative, additional service providers, community supervision officer, and a law enforcement officer (Supreme Court of the State of Florida, 2017). Each of these team members must participate in staff meetings to “review a participant’s progress, determine appropriate actions to improve outcomes, and prepare for status hearings in court” and communicate with other team members to aid in continuity of care (Supreme Court of the State of Florida, 2017). The pre-adjudication intervention manual identifies a “drug court specialist” as the primary case manager and overseer of the program (Florida Thirteenth Judicial Circuit, 2018). The manual also details the role of the public defender’s office, the state attorney’s office, the department of corrections, and treatment providers in liaising with the drug court program and providing a coordinated effort to report and make recommendations regarding participant compliance and progress (Florida Thirteenth Judicial Circuit, 2018). While the pre-adjudication intervention program has not yet fully implemented its management team, the manual notes the ability of a coordinated, well-staffed management team in producing better outcomes for participants in terms of program completion and abstinence from drug use. (Florida Thirteenth Judicial Circuit, 2018).

Duration.

No program duration is explicitly provided by the Florida Adult Drug Court Best Practice Standards. However, the standards do recommend that treatment occurs over a 9 to 12 month period and that treatment providers should remain in contact with participants for a minimum of ninety days after program completion (Supreme Court of the State of Florida, 2017). The Thirteenth Judicial Circuit’s pre-adjudication intervention manual does not specify a program

duration. Such an outline will likely be included with a developed program phase outline. (Florida Thirteenth Judicial Circuit, 2018).

Program summary & recommendations.

Florida's Thirteenth Judicial Circuit implements a drug court program with multiple divisions (pre-adjudication intervention, post-adjudication drug court, family dependency treatment, and juvenile drug court). The defining elements and components, as well as regulations with regards to incentives and sanctions and drug testing, are consistent across the various drug court programs while program components such as team members, eligibility criteria, screening referral processes, court phases, court staffing, treatment progress reporting procedures, and discharge procedures vary and are tailored by court type.

The Florida Adult Drug Court Best Practice Standards provide detailed guidelines for implementation of drug courts throughout the state. However, as discussed with the Thirteenth Judicial Circuit pre-adjudication intervention program, many details of the state standards are omitted, altered, contradicted, and/or replaced in individual program manuals. The lack of consistency in program guidelines and standards in the absence of state legislation mandating those guidelines makes standardization of Florida's drug court programs near impossible. It should also be noted that, despite requirement in the Florida Adult Drug Court Best Practice Standards, performance measures for the Thirteenth Judicial Circuit pre-adjudication intervention program have not been published. These measures are critical to the evaluation of the success of the program and should be published for both internal programmatic use as well as public and academic use as early as data is available.

The state of Florida and the Thirteenth Judicial Circuit offer a positive example of drug court policy and its implementation, respectively. However, Florida would be better served by

passing legislation which mandates the operation of multiple drug courts serving the diverse needs of high-risk, high-need participants in every county/judicial circuit. Such legislation should also mandate that all current and newly developed drug court programs implement the Florida Adult Drug Court Best Practice Standards. The Standards should be modified to phase out the post-adjudication program model once it has operated in all counties/judicial circuits for a sufficient length of time to allow eligible individuals (i.e. those currently convicted and sentenced for drug-related crimes) to participate in the program. The Standards are, generally, well-founded in the principles of therapeutic jurisprudence and the 10 key components of drug courts (a best practice developed by the NADCP Standards) as well as including best-practice provisions for equity and inclusion, incentives and sanctions, and the management team. However, a more detailed outline of program duration and phases must be developed in Florida's Standards.

Requiring programmatic and client-level data to be provided to the Office of State Courts Administrator is a critical component to ensuring Florida drug courts meet program goals and must be enforced. However, if Florida drug courts aim to reduce drug dependency and recidivism, these programmatic goals must be codified in the statute and drug court reporting must include data on participant long-term outcomes (i.e. abstinence from drug use after graduation and recidivism) to effectively evaluate achievement of those goals. Statewide, mandated program elements across all drug courts in best-practice standards, their implementation, and annual reporting will produce a more cohesive, well-monitored drug court program in Florida to best serve participants and other states that wish to emulate Florida's model.

Overview of South Carolina Drug Courts

There is currently no state-level policy in place regulating the administration of drug courts in South Carolina. Drug courts are administered on a county-by-county basis by each judicial circuit and their program components vary between drug courts. There are no best practices published by the state to serve as guidelines for South Carolina drug courts and no individual judicial circuit has developed any best practice guidelines or standards. Therefore, information regarding the components of individual drug court programs can only be found on county and judicial circuit websites, typically consisting of a single page that gives general criteria for program eligibility and requirements. This section will review those components and discuss their consistency with best practices outlined and discussed in the analysis of Florida drug courts.

A sample of five adult drug courts across five judicial circuits is discussed in this section: Fifth Judicial Circuit/Richland and Kershaw Counties, Seventh Judicial Circuit/Spartanburg and Cherokee Counties, Ninth Judicial Circuit/Charleston County, Thirteenth Judicial Circuit/Greenville and Pickens Counties, and Sixteenth Judicial Circuit/York County. These drug court programs were selected based on their availability of information on programmatic components which are various and diverse across programs. It should be noted that this discussion does not include juvenile drug courts and it does not include all possible variations in program components across the 22 adult drug courts in South Carolina. A lack of available information on drug court programs in South Carolina poses a barrier to comprehensive evaluation of program components and renders a survey of the complete landscape of South Carolina drug courts nearly impossible.

Purpose.

Though not explicitly stated by any drug court included in this discussion, a foundation in therapeutic jurisprudence is evident in South Carolina drug courts. Both the Seventh Judicial Circuit and the Thirteenth Judicial Circuit programs include language about serving offenders whose crimes result from or support drug addiction (Spartanburg County, n.d.; Office of the Solicitor: Thirteenth Judicial Circuit, 2002). Several programs also allude to an outcome-based approach aimed at ending drug abuse, recidivism, and associated socioeconomic cost. The Sixteenth Judicial Circuit states a programmatic goal of “end[ing] the cycle of drug abuse/crime/incarceration” (Solicitor’s Office: Sixteenth Judicial Circuit, n.d.) and the Fifth Judicial Circuit program lists a stated purpose to “bring together the criminal justice and the public health systems to meaningfully treat chemically dependent offenders, thereby reducing drug use, increasing public safety and improving the quality of life for the community” (Fifth Judicial Circuit Solicitor’s Office, 2019). The Ninth Judicial Circuit drug court places emphasis on “self-sufficiency and personal responsibility” (Charleston County, 2019), though this stated purpose may have problematic implications for blaming drug addicted persons when considered from a public health perspective which defines drug addiction as a disease rather than a personal, moral failing. A summary of the stated program purpose for each drug court discussed in this section can be found in Table 2 below:

Table 2: Stated Purpose of SC Drug Courts by Judicial Circuit

Judicial Circuit (County/Counties)	Offenders Served	Program Purpose
5th (Kershaw, Richland)	Adult	“The purpose of the Drug Court Program is to bring together the criminal justice and the public health systems to meaningfully treat chemically dependent offenders, thereby reducing drug use, increasing public safety and improving the quality of life for the community” (Fifth Judicial Circuit Solicitor’s Office, 2019).

7th (Cherokee, Spartanburg)	Adult	“The Seventh Circuit Drug Court is a criminal justice diversionary program that offers an alternative for nonviolent offenders who commit crimes to support their addictions to alcohol or drugs” (Spartanburg County, n.d.).
9th (Berkeley, Charleston)	Adult	“Charleston County Adult Drug Court provides a cost-effective alternative to traditional prosecution and incarceration of nonviolent offenders with substance abuse problems. The goal of Drug Court is to reduce crime and rehabilitate offenders through court supervision and substance abuse treatment. The program is designed to promote self-sufficiency and personal responsibility. Participation requires a personal commitment. Members of the Drug Court Team are present to guide and assist participants, but the final responsibility is theirs. Defendants must be motivated to make this change and commit to a more responsible way of life” (Charleston County, 2019).
13th (Greenville, Pickens)	Adult	“The Thirteenth Circuit Drug Court program is a criminal justice diversion program that offers an alternative for those persons whose crimes are the result of their drug addiction... Drug Court is an opportunity for those persons whose drug addiction has led to criminal behavior to change their lives” (Office of the Solicitor: Thirteenth Judicial Circuit, 2002).
16th (York)	Adult	“Drug Court is an opportunity for nonviolent criminal offenders, who are dependent on alcohol/other drugs, to receive addiction treatment and rehabilitative services to address dissocial/criminal behavior instead of incarceration. The program offers participants a chance to take control of their lives, end the cycle of drug abuse/crime/incarceration and learn how to live sober, responsible, and satisfyingly productive lives” (Solicitor’s Office: Sixteenth Judicial Circuit, n.d.).

Target population.

All drug courts discussed serve drug addicted persons age 17 or older convicted of a nonviolent crime related to drug dependency (Fifth Judicial Circuit Solicitor’s Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d.). The Fifth and Sixteenth Judicial Circuit programs explicitly exclude otherwise eligible participants with a violent

criminal history or prior possession, carry, or use of a firearm or other dangerous weapon (Fifth Judicial Circuit Solicitor's Office, 2019; Sixteenth Judicial Circuit, n.d.). The Ninth Judicial Circuit program excludes offenders with "certain items on your prior criminal record," though does not specify which crimes or types of crimes lead to ineligibility (Charleston County, 2019). Exclusion of violent offenders and those with a violent criminal history and/or weapons charge(s) does not meet best practice recommendation for serving high-risk/high-need offenders.

Clinical assessment by a program team member is only specifically mentioned by Ninth and Sixteenth Judicial Circuit programs (Charleston County, 2019; Solicitor's Office: Sixteenth Judicial Circuit, n.d.). Mental illness is listed as an ineligibility criteria by the Ninth Judicial Circuit program (Charleston County, 2019) and the Sixteenth Judicial Circuit program stipulates that eligible participants "Must have the cognitive ability to participate in the assessment process and treatment" (Solicitor's Office: Sixteenth Judicial Circuit, n.d.), implying exclusion of mentally ill offenders. Drug court best practices outlined earlier in this chapter maintain the inefficacy of excluding offenders with co-morbid conditions such as mental illness.

All drug court programs used in this analysis require defendants to plead guilty to their charges and receive a suspended sentence to participate in the drug court (Fifth Judicial Circuit Solicitor's Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor's Office: Sixteenth Judicial Circuit, n.d.). Only the Fifth Judicial Circuit drug court program specifies dismissal of charges upon program completion (Fifth Judicial Circuit Solicitor's Office, 2019) whereas the Thirteenth Judicial Circuit program lists sentence satisfaction as resulting from program completion (Office of the Solicitor: Thirteenth Judicial Circuit, 2002). Failing to dismiss charges upon program completion restricts participants' ability to find housing and employment after graduation and may lead to

relapse and recidivism. Further, the absence of this incentive may deter eligible offenders from participating in the drug court program. A summary of eligibility criteria for each judicial circuit's drug court program is given in Table 3 below:

Table 3: Eligibility Criteria of SC Drug Court Programs by Judicial Circuit

Judicial Circuit	5th	7th	9th	13th	16th
Participant Minimum Age	17	17	17	17	17
Guilty Plea Required?	Yes	Yes	Yes	Yes	Yes
Exclusion of Violent Offenders?	Yes	Yes	Yes	Yes	Yes
Exclusion of Defendants with Prior Violent Crimes (Explicit/Implicit)?	Yes (Explicit)	No*	Yes (Implicit)	No*	Yes (Explicit)
Exclusion of Defendants with Prior Weapons Charges (Explicit/Implicit)?	Yes (Explicit)	No*	Yes (Implicit)	No*	Yes (Explicit)
Clinical Assessment Required?	No*	No*	Yes	No*	Yes
Exclusion of Defendants with Co-Morbid Mental Health Condition(s) (Explicit/Implicit)?	No*	No*	Yes (Explicit)	No*	Yes (Implicit)
Charges Dismissed Upon Program Completion?	Yes	No*	No*	No*	No*

*See Footnote¹

(Fifth Judicial Circuit Solicitor's Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor's Office: Sixteenth Judicial Circuit, n.d.)

Other barriers to program participation may reduce these programs' ability to promote equity and inclusion when identifying and serving the target population. The Seventh, Ninth, and Thirteenth Judicial Circuit programs require a program application fee of \$100-150 and a weekly

¹It should be noted that programs listed as not having an eligibility or exclusion criterion merely did not include the criterion on their website. This does not necessarily mean that the criterion is not a component of the program, only that the information was not provided or specified.

programmatic fee of \$25-35 (Spartanburg County, n.d; Charleston County, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002). This financial barrier to participation has negative implications for equity and inclusion as potential participants of low SES, a status which disproportionately intersects with racial/ethnic, sexual orientation, and ability minority statuses, may not be able to afford to apply or remain in the program.

All five drug court programs require participants to obtain and maintain employment for eligibility, a challenging requirement to meet in conjunction with required felony conviction as well as a requirement which may disproportionately impact offenders of one or more marginalized identities experiencing employment discrimination (Fifth Judicial Circuit Solicitor’s Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d.). A restitution payment requirement by the Seventh and Ninth Judicial Circuits program and a “reliable transportation” requirement by the Sixteenth Judicial Circuit program have similar implications for equity and inclusion of marginalized populations (Charleston County, 2019; Spartanburg County, n.d.; Solicitor’s Office: Sixteenth Judicial Circuit, n.d.). A summary of exclusionary eligibility requirements which may impact program equity and inclusion are given below in Table 4:

Table 4: Other Exclusionary Eligibility Criteria of SC Drug Court Programs by Judicial Circuit

Judicial Circuit	Program Application Fee (Amount)?	Weekly Program Fee (Amount)?	Employment Required?	Other Exclusionary Eligibility Criteria?
5th	No*	No*	Yes	No*
7th	Yes (\$150)	Yes (\$25)	Yes	Yes (Restitution Payment)
9th	Yes (\$100)	Yes (\$30)	Yes	Yes (Restitution Payment)
13th	Yes (\$150)	Yes (\$35)	Yes	No*

16th	No*	No*	Yes	Yes (Reliable Transportation)
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*See Footnote¹

(Fifth Judicial Circuit Solicitor’s Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d.).

Incentives & sanctions.

Only the Fifth and Sixteenth Judicial Circuit mention incentives as a component of the drug court program. No specific behaviors resulting in the administration of incentives is described in either program and only the Fifth Judicial Circuit program lists specific incentives, including: “awards, certificates, and verbal acknowledgement” (Fifth Judicial Circuit Solicitor’s Office, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d.). The critical importance of incentives (possibly more important than sanctions) is recognized in drug court best practice and should be implemented by all programs.

In contrast to the lack of information on compliance incentives, every program reviewed offers information on sanctions for noncompliance. The Fifth Judicial Circuit program defines its compliance sanctions as “escalating” (Fifth Judicial Circuit Solicitor’s Office, 2019) and the Sixteenth Judicial Circuit program qualifies sanctions as “based upon the severity of the offending behavior, taking into consideration the participant’s overall history of compliance/noncompliance as well as his/her overall attitude and behavior” (Solicitor’s Office: Sixteenth Judicial Circuit, n.d.). The only programs offering a list of specific behaviors resulting in administration of sanctions is the Fifth Judicial Circuit which include drug use, missed

¹It should be noted that programs listed as not having an eligibility or exclusion criterion merely did not include the criterion on their website. This does not necessarily mean that the criterion is not a component of the program, only that the information was not provided or specified.

counseling or court appointments, and “poor attitude” (Fifth Judicial Circuit Solicitor’s Office, 2019). The Ninth Judicial Circuit program defines failed drug tests (i.e. relapse) as grounds for program termination (Charleston County, 2019). Drug court best practice recommends noncompliant actions/behaviors be specified in writing along with resulting sanctions and given to participants prior to program admission. Additionally, best practice discourages sanctioning relapse and, rather, recommends a therapeutic response, a recommendation only followed by the Sixteenth Judicial Circuit Program (Solicitor’s Office: Sixteenth Judicial Circuit, n.d.).

All reviewed drug court programs provide a non-comprehensive list of potential sanctions, though none associate specific behaviors with a given sanction (Fifth Judicial Circuit Solicitor’s Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d). Only the Ninth and Sixteenth Judicial Circuit programs offer examples of low-level sanctions (e.g. written assignments) (Charleston County, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d.). All programs list moderate sanctions (e.g. increased drug testing, court appearances, and counseling sessions; community service, and/or monetary fines) and high-level sanctions (e.g. referral to inpatient treatment, jail time, and/or termination) (Fifth Judicial Circuit Solicitor’s Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d). Low-level sanctions are recognized as a best practice for ensuring compliance without discouraging participant engagement and should be implemented in all drug court programs. A summary of program incentives and sanctions is given in Table 5 below:

Table 5: Incentives and Sanction in SC Drug Court Programs by Judicial Circuit

Judicial Circuit	5th	7th	9th	13th	16th

Incentives Mentioned (List)?	Yes (Awards, Certificates, Verbal Acknowledgement)	No*	No*	No*	Yes (No Specific Incentives Listed)
Behaviors Associated with Incentive Mentioned (List)?	No*	No*	No*	No*	No*
Incentives Progressive in Magnitude?	No*	No*	No*	No*	No*
Sanctions Mentioned (List)?	Yes (Community Service, Additional Counseling Sessions, Increased Drug Testing, Monetary Fines, Jail, Program Termination)	Yes (Increased Program Duration/Intensity, Community Service, Jail, Program Termination)	Yes (Community Service, Written Essays)	Yes (Community Service, Written Essays, Jail, Program Termination)	Yes (Written Essay, Curfews, Increased Drug Testing/Court Appearances, Additional Counseling Sessions, Community Service, Repeating Earlier Phase, Referral to Inpatient Treatment, Jail, Program Termination)
Behaviors Associated with Sanction Mentioned (List)?	Yes (Drug Use, Missed Counseling or Court Appointments, Poor Attitude)	Yes (Only Program Non-compliance Mentioned)	Yes (Only Program Non-compliance Mentioned)	Yes (Only Program Non-compliance Mentioned)	Yes (Only Program Non-compliance Mentioned)

Sanctions Progressive in Magnitude?	Yes	No*	No*	No*	No*
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*See Footnote¹

(Fifth Judicial Circuit Solicitor’s Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor’s Office: Sixteenth Judicial Circuit, n.d.)

Management team.

Only the Fifth, Seventh, and Sixteenth Judicial Circuit programs provide some details as to the program’s management team (Fifth Judicial Circuit Solicitor’s Office, 2019; Spartanburg County, n.d.; Solicitor’s Office: Sixteenth Judicial Circuit, n.d). The Ninth Judicial Circuit merely mentions “Members of the Drug Court Team are present to guide and assist participants” (Charleston County, 2019). The Sixteenth Judicial Circuit program lists the Drug Court Judge, the Program Director, the Drug Court Coordinator, and the Drug Court Investigator as members of the management team but does not specify their roles and responsibilities in the drug court program (Solicitor’s Office: Sixteenth Judicial Circuit, n.d.). The Seventh Judicial Circuit program describes a “partnership between the Seventh Circuit Solicitor’s Office, the Spartanburg Alcohol and Drug Abuse Commission (SADAC) and the Seventh Circuit Public Defender’s Office,” though no specific team members are mentioned and, again, no roles or responsibilities are assigned (Spartanburg County, n.d.).

¹It should be noted that programs listed as not having an incentive or sanction criterion merely did not include the criterion on their website. This does not necessarily mean that the criterion is not a component of the program, only that the information was not provided or specified.

The most detailed description of management team members is given by the Fifth Judicial Circuit program states that the role of the solicitor's office is to review, present, and give final authority on all applications submitted to the program, though the judge has final authority on application approval. Additionally, the program requires participants to meet with the judge, program manager, and treatment provider for phase advancement (Fifth Judicial Circuit Solicitor's Office, 2019). More detailed guidelines for management team member responsibilities and training are needed in each program to ensure the management team comprehensively serves the needs of participants and delivers continuous care.

Duration.

Program durations ranged from 12 to 18 months, with all but the Thirteenth Judicial Circuit program listing the program length as a "minimum" or otherwise specifying the potential of longer participation. Requirements for program completion varied among all drug court programs and included: individual and group therapy sessions, AA/NA or other support group meetings, court appearances, random drug testing, case management, restitution payment, community service, and/or residence in a recovery house (Fifth Judicial Circuit Solicitor's Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor's Office: Sixteenth Judicial Circuit, n.d.; York County Court of Common Pleas, 2009).

The Fifth, Ninth, and Sixteenth Judicial Circuit programs are divided into phases, though only the Fifth and Sixteenth Judicial Circuit programs specify decreasing requirements (e.g. counseling sessions, AA/NA meetings, court appearances, and/or drug tests) with phase advancement (Fifth Judicial Circuit Solicitor's Office, 2019; Charleston County, 2019; Solicitor's Office: Sixteenth Judicial Circuit, n.d.; York County Court of Common Pleas, 2009).

In accordance with drug court best practice, the Fifth Judicial Circuit does not decrease the frequency of drug testing until the final phase of the program (Fifth Judicial Circuit Solicitor's Office, 2019). The Fifth and Sixteenth Judicial Circuit programs list aftercare as a portion of program duration, a best practice to ensure program graduates receive continuous care in relapse and recidivism prevention (Fifth Judicial Circuit Solicitor's Office, 2019; Solicitor's Office: Sixteenth Judicial Circuit, n.d.; York County Court of Common Pleas, 2009). All drug court programs can benefit from written program phases detailing requirements for each phase which decrease with phase advancement. A summary of program duration and phases is given in Table 6 below:

Table 6: Duration and Phases of SC Drug Court Programs by Judicial Circuit

Judicial Circuit	Program Minimum Duration	Program Divided into Phases?	Decreasing Requirements?	Aftercare Program Phase?
5th	12 Months	Yes	Yes	Yes
7th	14 Months	No*	N/A	N/A
9th	15 Months	Yes	No*	No*
13th	18 Months	No*	N/A	N/A
16th	18 Months	Yes	Yes	Yes

*See Footnote¹

(Fifth Judicial Circuit Solicitor's Office, 2019; Office of the Solicitor: Thirteenth Judicial Circuit, 2002; Spartanburg County, n.d.; Charleston County, 2019; Solicitor's Office: Sixteenth Judicial Circuit, n.d.)

¹It should be noted that programs listed as not having a duration criterion merely did not include the criterion on their website. This does not necessarily mean that the criterion is not a component of the program, only that the information was not provided or specified.

Parameters of Successful Drug Court Legislation & Program Outcomes

There is much variability in the parameters used to define a successful drug court or drug court legislation in the literature. Generally, reductions in recidivism rates, socioeconomic cost, and drug dependency (generally measured through relapse rates) are identified as key parameters for success (Downey, Green, Rempel, & Rossman, 2011; Downey & Roman, 2011; Drake, 2012; Green & Rempel, 2011; King & Pasquarella, 2009; McLellan, A. T., 2008; Mitchell et al., 2012; National Institute of Justice, n.d.; National Institute of Justice, 2010). However, the methodology of data collection is not uniform for any of these parameters, challenging efforts to set benchmarks for success in any parameter. Determining benchmarks is also hindered by the dearth of drug courts that report outcome data yields an unrepresentative sample when measuring recidivism, socioeconomic cost, and drug dependency outcomes across multiple drug courts. Additionally, the body of literature on socioeconomic cost and recidivism outcomes had been developed far more than the literature on outcomes related to drug dependency (i.e. relapse). This is a critical gap in the literature which raises questions regarding the purpose of drug courts: are these programs designed strictly to impact mass incarceration or to address the public health crisis drug addiction? If the latter, long-term health outcomes relating to drug dependency among drug court participants must be further explored in the literature. All parameters of successful drug court legislation and program outcomes would benefit from further study yielding standardized results and benchmarks.

Reduced recidivism.

Recidivism is the most-studied, direct measure of drug court program and legislation success. Graduates of drug courts are, generally, less likely to be rearrested than individuals processed through traditional criminal courts (Green & Rempel, 2011; King & Pasquarella,

2009; National Institute of Justice, n.d.). However, there is inconsistency in the percentage reduction in recidivism drug courts produce. Drug court sample sizes in various studies have ranged from single case studies to analyses of 76 drug court to meta-analyses of 57 smaller sample studies. These evaluations estimated recidivism reductions ranging from 4-70% (King & Pasquarella, 2009). A review of the literature by the National Institute of Justice (n.d.) discussed meta-analyses of drug court outcomes which varied in their evaluation of drug court impact on recidivism, some meta-studies suggesting drug courts produce “a significant decrease in the recidivism of drug court participants compared to non-participants” while other meta-analyses suggested “findings were not significant.” Drug court participants are less likely to report committing crimes 18 months after program graduation than previously incarcerated non-participants (40% vs. 53%) and less likely to possess and/or sell drugs; however, reduced rearrest rates among drug court graduates compared to non-participants are not statistically significant (Downey & Roman, 2011; Green & Rempel, 2011).

Statistical variation in drug court impact on recidivism likely due, at least in part, to inconsistencies in data collection methodology. Most studies reference the impact of drug courts on reducing recidivism among “participants” (National Institute of Justice, n.d.; Green & Rempel, 2011), but do not specify if this includes all participants (both graduates and those terminated from the drug court program) or strictly program graduates. “[D]rug court participants who graduate tend to have much lower recidivism rates than drug court dropouts” (King & Pasquarella, 2009). For data collected on program graduates, length of time after graduation poses another data variable. Short-term studies, particularly those collecting data on larger samples of drug courts, may only collect data on drug court program graduates for a few months to a year after graduation. In one rare instance, the Multnomah County, Oregon drug

court tracked recidivism rates among program participants “thirteen years after initial entry into the program” (King & Pasquarella, 2009). Issues of equity and inclusion of marginalized populations in drug court participant evaluation, retention, and administering of sanctions (discussed earlier in this literature review) carry over to outcome measures including recidivism. Without delineating participant demographics, recidivism rates may fail to illuminate disparities in successful reduction of participant recidivism and/or be collected from drug court programs with existing inequities in evaluation, retention, and sanction administration.

Reduced socioeconomic cost.

Decreases in socioeconomic cost as a result of drug court legislation and program implementation are largely associated with reductions in recidivate criminal justice system processing (fewer victimization, jail, case processing, and court costs) and drug dependency healthcare costs. Estimated savings have ranged from \$1,000-15,000 per participant (King & Pasquarella, 2009) with an average net benefit of \$5,680 to \$6,208 per participants, though these findings are not statistically significant. (Downey & Roman, 2011). Drake (2012) found that the benefit to cost ratio for adult drug courts was \$1.77 in 2011 dollars. Similarly, King and Pasquarella (2009) estimated a benefit to cost ratio of \$1.74, though the sample size in this study was only five drug courts. Given the earlier discussion on drug court best practice in eligibility requirements, “[a]n important implication is that drug courts are especially likely to save money if they enroll serious offenders (who, in the absence of drug court, are particularly likely to engage in serious future offending)” (Downey & Roman, 2011).

Cost savings of drug courts are largely distal, meaning that, while drug courts may require a larger up-front investment than traditional criminal court processing, they produce net savings in long-term costs associated with cyclical crime and drug dependency (Downey &

Roman, 2011). Most studies tend to focus on directly related cost saving areas such as criminal justice processing and avoidance of victimization costs such as property damage, while ignoring more indirect points of social cost saving like job growth (though these social cost savings have been found statistically insignificant by some sources), economic activity (i.e. participating in the economy because one is not in prison), and healthcare costs such as drug overdose treatment (National Institute of Justice, 2012; Downey & Roman, 2011). Focusing on socioeconomic cost savings directly associated with the criminal justice system may benefit drug courts in advocating for federal or state funding, but does not fully capture the potential of these programs to impact socioeconomic cost. Variability in types of cost measured in calculating socioeconomic cost savings of drug courts as well as the abstract, distal nature of many of those costs produce inconsistencies in this outcome measure. Given the current landscape of literature on drug court socioeconomic cost reduction, determining a benchmark for successful drug court legislation and programs is not feasible.

Reduced drug dependency.

There is some evidence to suggest that drug courts reduce drug dependency among participants, though this outcome measure for success is, perhaps surprisingly, the least studied parameter of those identified. Downey, Green, Rempel, and Rossman (2011) found that drug court participants were “significantly less likely” than nonparticipants to report any drug use (56% vs. 76%), serious drug use (41% vs. 58%), and relapse¹ (no data provided) one year after program participation. It should be noted that the study did not specify if sampled participants had graduated from their drug court programs, only that they had participated one year prior to data collection. Participants were also less likely than nonparticipants to test positive for drugs

¹ Relapse is defined as “a return to drug use after an attempt to stop” (National Institute on Drug Abuse, 2018).

one year after program participation (29% vs. 46%) (Downey, Green, Rempel, and Rossman, 2011).

In evaluating drug dependency treatment programs to which drug court participants are referred, “a review of the now over 1,000 controlled experimental evaluations of drug abuse treatments shows that many components of treatment can reliably produce lasting (six months or longer) changes in one or more... [drug court clinical] evaluation domains¹” (McLellan, 2008). A meta-analysis of four studies on drug court impact on participant drug dependency “found an odds ratio of 1.45, which indicates reduced drug use for drug court participants compared to nonparticipants. However, because of the small number of studies, the effect size was not significant” (Mitchell et al., 2012). Some studies have suggested that drug court programs may not produce desired results in reduced drug dependency among participants with “the most serious addictions or those who use the hardest drugs” (King & Pasquarella, 2009). Drug treatment best practices also suggest that relapse is part of the process of recovery from drug dependency due to the chronic nature of addiction and that emphasis should be placed on counteracting the disruptive nature of drug dependency to help people regain functionality and productivity (National Institute on Drug Abuse, 2018). Further research into the impact of drug courts on drug dependency rates and participant relapse are critical to determining a benchmark for successful drug court legislation and program implementation.

H. 3322 Introduction

Introduced in the 123rd Congress of the South Carolina Legislature, H. 3322 Section 302: Drug Court Program is one portion of an omnibus legislative effort for sentencing reform. The

¹ Drug court clinical evaluation domains include: “[e]limination or reduction of alcohol and other drug use...[i]mproved health and function...[and] [r]eduction in public health and public safety threats” (McLellan, 2008)

purpose of Section 302 is twofold: first, to create an outline of standards to regulate existing adult and juvenile drug courts in South Carolina and second, to provide guidelines for the mandated establishment of both adult and juvenile drug courts in every judicial circuit. Inconsistencies between drug courts across the state as well as the deficiency of best practice implementation (within the limits that best practices can be established in drug court literature) among all South Carolina drug courts suggests the necessity of effective regulatory, best practice legislation.

A lack of mandated standardization in drug court practices, even in conjunction with best practices guidelines, produces inconsistencies in implementation across drug courts as seen in Florida's Thirteenth Judicial Circuit adult drug court program. Moreover, without mandated, consistent reporting on program outcomes relating to socioeconomic cost and participant relapse and recidivism post-graduation, the impact of these programs cannot be truly evaluated. Finally, until drug courts come into compliance with best practices standards engage in some type of evaluation of the outcomes, the real impact of the socioeconomic cost and participant relapse and recidivism post-graduation will remain unknown. The use of socioeconomic cost and participant relapse and recidivism post-graduation as parameters for successful drug court legislation and program outcomes in the literature will be explored in the succeeding pages.

Legislative history.

Drug court legislation was first introduced at the South Carolina Statehouse during the 119th Legislative Session. On March 7th, 2012, S. 1317 (2012), the Drug Court Program Act, was introduced and first read¹, after which it was referred to the Senate Committee on Judiciary.

¹ In the South Carolina Legislature, the first reading of a bill is defined by the introduction and reading of the title of a bill (including a pre-filed bill, or one filed prior to the beginning of the

On March 9th, 2012, the bill was referred to a Judiciary Subcommittee where it died in committee. A companion House Bill, H. 4970 (2012), was introduced and first read in the House on March 8th, 2012. The bill was referred to the House Committee on Judiciary where it stalled. In every Legislative Session following the 119th Session, the Senate has introduced the Drug Court Program Act (S. 141, 2013; S. 327, 2015; S. 163, 2017; S. 50, 2019). The House filed a Drug Court Program Act in the 120th Session (H. 3768, 2013), but did not file the bill in any following Legislative Session. In the 122nd Session, the House introduced H. 5155 (2017), an omnibus sentencing reform bill that included Section 305: Drug Court Program. This bill was the immediate predecessor of H. 3322.

H. 3322 (2019) is one of two omnibus sentencing reform bills currently on the docket at the South Carolina Statehouse. A companion sentencing reform Senate Bill, S. 639 (2019), also includes a provision to establish both adult and juvenile drug court programs in each judicial circuit. Another Senate Bill, S. 50 (2019), was filed independently of the omnibus bills and titled the Drug Court Program Act. S. 50 (2019) was pre-filed and referred to the Senate Committee on Judiciary on December 12th, 2018. The bill was introduced and first read on January 8th, 2019, and again it was referred to the Committee on Judiciary (S. 50, 2019). The bill stalled in committee and has not made any further progress. H. 3322 (2019), like S. 50, was pre-filed on December 18th, 2018 and referred to the House Committee on Judiciary. It was introduced and first read on January 8th, 2019 and referred back to the Committee on Judiciary (H. 3322, 2019). H. 3322 (2019) was given a favorable committee report on March 27th, 2019 and requested for debate on April 9th, 2019. The House reconsidered the bill on April 25th, 2019, and debate was adjourned on May 2nd, 2019. No further action has been taken on the bill. Seventeen members

legislative session), after which the bill is referred to a committee (South Carolina Legislature, 2019).

of the House have added their names as co-sponsors of the bill since it was introduced (H. 3322, 2019). The companion Senate Bill, S. 639 (2019), was introduced and first read on March 12th, 2019, after which it was referred to the Senate Committee on Judiciary. The bill has not left committee.

In comparing H. 3322 with the companion Senate Bill, S. 639, several key differences emerge. H. 3322 (2019) requires drug court programs to “incorporate” the NADCP “as appropriate, in order to develop best practices to be utilized by the program[s].” By contrast, S. 639 (2019) merely requires that drug court programs “be based on” NADCP standards and does not mention best practices. This may indicate that the House bill intends for NADCP standards to be more strictly followed than the Senate Bill. H. 3322 (2019) also acknowledges the importance of best practices and, in requiring the incorporation of NADCP standards, may prevent drug court programs from developing standards which are inconsistent with NADCP standards, recognized as best practice.

Both H. 3322 (2019) and S. 639 (2019) include a pre-adjudication eligibility provision for nonviolent offenders who are not convicted, in which case the court defers any further proceedings. Unlike H. 3322, S. 639 (2019) includes a provision for post-adjudication eligibility of offenders convicted of nonviolent offenses and placed on probation. This provision may benefit incarcerated individuals currently convicted of nonviolent, drug-related offenses who are eligible for parole. However, it may also allow drug courts to require new offenders who are eligible participants to be convicted of a felony drug-related crime in order to participate in the drug court program. A conviction requirement for program participation may deter high-risk, high-need, eligible offenders from participating in the drug court. S. 639 (2019) has an added provision requiring post-adjudication participants terminated from the program to be “reported to

the South Carolina Department of Probation, Parole, and Pardon Services which may institute proceedings to revoke probation.” This provision, again, may deter eligible participants from participating in a post-adjudication drug court program for fear of incarceration should they be terminated from the program, and rather plead their cases in criminal court.

Senate Bill S. 50 (2019) includes the post-adjudicatory provisions included in S. 639 (2019), however, it has several additional provisions not included in S. 639 or H. 3322. Senate Bill S. 50 (2019) includes an eligibility provision for participants in a post-adjudicatory program to “plead guilty or nolo contendere” to the charges for which they are being referred to the drug court program without a judgement of guilt being entered. Additionally, if terminated from the program, participants who have pled guilty to their charges “must have...sentencing imposed” (S. 50, 2019). Requiring a guilty plea and the threat of sentencing may deter otherwise eligible participants from participating in a drug court program. Senate Bill S. 50 (2019) does not allow previous participants in a drug court program (successful or unsuccessful) to be considered for eligibility. This provision may lead drug court programs to underserve otherwise eligible, high-risk, high-need participants for whom previous participation in a drug court program did not provide adequate treatment or long-term relapse and recidivism prevention. A summary of key differences between H. 3322, S. 639, and S. 50 is given in Table 7 below:

Table 7: Key Differences Between H. 3322, S. 639, and S. 50

Bill	H. 3322	S. 639	S. 50
Standards "based on" or "Incorporating" NADCP Standards	"Incorporating"	"Based On"	"Based On"
Pre-Adjudication Program Included?	Yes	Yes	Yes
Post-Adjudication Program Included?	No	Yes	Yes
Guilty Judgement (Without Plea) Provision in Post-	N/A	Yes	Yes

Adjudication Program?			
Guilty Plea Provision for Post-Adjudication Program	N/A	No	Yes
Incarceration Mandated if Terminated from Post-Adjudication Program?	N/A	No	Yes
Previous Drug Court Participants Eligible?	Yes	Yes	No

(H. 3322, 2019; S. 639, 2019; S. 50, 2019)

In comparison to other iterations of drug court program legislation, House bill H. 3322 Section 302 demonstrates the most progressive language and provisions. The bill requires drug court programs to incorporate NADCP standards (which are acknowledged in the bill as best practice), removes provisions for post-adjudicatory programs, and allows eligibility for previous drug court participants (H. 3322, 2019). Thus, H. 3322 shows the strongest commitment to drug court best practices among bills being considered during the 123rd Legislative Session.

Conclusion

Drug courts have provided a promising solution to the interlocking crises of mass incarceration and drug dependency in the United States over the past thirty years. Drug court best practices have been discussed in the literature; however, no federal nor state code exists to mandate the implementation of drug courts in compliance with best practices. A lack of consistent, conclusive data on long-term program outcomes (along parameters of recidivism, socioeconomic cost saving, and drug dependency) largely prohibits a definitive schedule of best practice standards from being codified on the state level or federally, despite the support of federal funding for drug court programs.

However, there is enough data to suggest that drug courts produce better long-term outcomes than incarceration, even if the degree to which drug courts are more successful cannot be determined at this time. Evidence of this inexact success is seen in the adult drug court

program implemented in the Thirteenth Judicial Circuit of Florida among other examples in the literature. No program examined meets best practices based on currently available evidence; however, all do succeed in improving long-term outcomes in comparison to incarceration.

The question becomes, if drug courts without codified best practices are already successful, how much more successful can they become if standardized through best practices codified by the state? The next chapter will examine one piece of legislation, H. 3322, proposed to codify drug court standards in South Carolina. The existing literature on drug court best practices as well as the current state of South Carolina drug courts will be considered in a discussion of the feasibility of H. 3322 in producing greater success among existing and new drug court programs across the state. One insight is apparent in the literature: more consistently collected evidence over a duration of years is necessary to definitively define benchmarks for drug court success and the programmatic best practice standards used to achieve such success. Only then can best practices be codified on the platform of a methodical, comprehensive body of evidence.

Chapter 3: Methodology & Results/Discussion

Methodology

South Carolina Legislature House Bill H. 3322 § 302: Drug Court Program Act will be analyzed using the methodological framework outlined earlier. H. 3322 will first be examined for application of drug court best practices outlined and discussed in Literature Review sections: Overview of Drug Courts, Example Legislative & Programmatic Model: Florida's Thirteenth Judicial Circuit, and Overview of South Carolina Drug Courts. The program elements identified in the literature review which will be discussed in the analysis of H. 3322 are: purpose, target population, incentives and sanctions, management team, and duration. The elements outlined in H. 3322 will then be discussed as well as their impact on existing drug court programs in South Carolina. Finally, the challenges and benefits of bringing existing drug courts into compliance with H. 3322, if codified, will be considered as well as additional considerations concerning the creation of new drug courts under H. 3322.

Given the inconclusive nature of the existing literature on benchmarks for successful drug court legislation and program outcomes, an examination of the impact of H. 3322 on new and existing drug court program outcomes will be limited. However, some discussion of potential influences of H. 3322 on long-term drug court program outcomes will be included. Further, a review of the following outcome parameters will be considered: reduced recidivism, reduced socioeconomic cost, and reduced drug dependency. Results in this section will largely be drawn from a 2018 report from the South Carolina Commission on Prosecution Coordination titled "Information on Cost and Recidivism Rates for Drug Courts, and Recidivism Rates for Other Diversion Programs" and Pitts' 2019 "Statement of Estimated Fiscal Impact" on H. 3322 published by the South Carolina Revenue and Fiscal Affairs Office. Though exact estimates are

not available, decreases in recidivism, socioeconomic cost, and drug dependency rates among existing programs that may result from H. 3322 will be discussed. Additionally, the impact of H. 3322 on new drug court programs will also be considered.

A series of interviews with key stakeholders in the House bill were conducted to provide additional insight in the policy analysis. These interviews are designed to contribute new information relative to the author's understanding of H. 3322 and its impact. Interviews were recorded and transcribed by the author with the informed consent¹ of the interviewees. Interview transcriptions were analyzed for content relevant to the author's key assertions. Quotes were selected based on the richness of their contribution to the Results/Discussion section and attributed to interviewees with their permission.

An anonymous² employee with the South Carolina Department of Corrections (SCDC), hereafter referred to as Interviewee A, was interviewed regarding the state of drug dependency among incarcerated inmates under the jurisdiction of SCDC. Interviewee A's interview schedule (found in Appendix A) included, but was not limited to questions concerning: the existence of drug dependency among SCDC inmates; the experiences of SCDC inmates with drug dependency before, during, and after incarceration; existing treatment programs for drug dependency within SCDC and their accessibility; the comorbidity of drug dependency and mental illness among SCDC inmates; the effectiveness of drug courts in treating drug

¹ The American Medical Association describes informed consent as "...an essential safeguard in research. The obligation to obtain informed consent arises out of respect for persons and a desire to respect the autonomy of the individual deciding whether to volunteer to participate in...research. For these reasons, no person may be used as a subject in research against his or her will" (1995).

² Anonymity is widely discussed in research ethics as a both a means of preserving participant privacy and confidentiality and a tool for engaging more freely with participants on topics that they may not otherwise be willing to discuss in a research setting; however, maintaining anonymity can be difficult without damaging the richness of interview material (Vainio, 2012; Kitzinger, Kitzinger, & Saunders, 2015).

dependency compared to current drug sentencing (i.e. incarceration); and other potential policy interventions to address drug dependency compared to current drug sentencing policy (i.e. incarceration).

An interview was also conducted with Bill Nettles, a criminal defense attorney and former U.S. Attorney for the South Carolina U.S. District Court. Mr. Nettles was interviewed regarding his experience with drug courts as the U.S. Attorney who implemented federal drug court programs in South Carolina during his tenure. Mr. Nettles' interview schedule (found in Appendix B) included, but was not limited to questions concerning: eligibility requirements and exclusions for potential participants, the role of incentives and sanctions, parameters for measuring success in drug courts (i.e. reduced recidivism, socioeconomic cost, and drug dependency), the role of the management team and community engagement, the impact of codifying drug court best practices for statewide implementation, and other potential policy interventions to address drug dependency compared to current drug sentencing policy (i.e. incarceration).

An additional interview was conducted with Bob Maldonado, former persecutor and public defender who has served as legislative counsel to the state legislature's Senate Judiciary Committee for seven year. Mr. Maldonado was interviewed regarding the political process of drafting, amending, and passing H. 3322 and other current state drug court legislation. Mr. Maldonado's interview schedule (found in Appendix C) included, but was not limited to the following questions: the current state of H. 3322 and similar drug court bills in the legislative process; a comparison of provisions in H. 3322 to similar Senate drug court bills; reasons previous drug court bills failed to gain support by the full legislature; and steps necessary to pass H. 3322. This and other interviews provide additional richness to the author's analysis of H.

3322 as key stakeholders possess insight into the policy and implementation processes, as well as the target population, of drug courts that oftentimes are invisible to the lay public.

Results

H. 3322 inclusion & detailing of best practices.

Purpose.

H. 3322 § 302: Drug Court Program Act (2019) mandates that “each circuit solicitor establish a drug court program in his respective circuit for adults and juveniles who commit nonviolent offenses. Each circuit’s drug court program must have a presence in each county in the circuit.” The requirement of each judicial circuit to operate both adult and juvenile drug court programs, with a programmatic “presence” in each county within the circuit (H. 3322, 2019), would necessitate the addition of 61 new adult and juvenile drug courts and bring the total number of drug court operating in South Carolina from 31 to 92 drug courts across 46 counties administered by 16 judicial circuit drug court programs. A summary of new drug courts which would be established under H. 3322 is provided in Table 8 below:

Table 8: New Drug Courts Established under H. 3322 in Each County by Judicial Circuit

Judicial Circuit	Counties Lacking Adult Drug Court Presence	Counties Lacking Juvenile Drug Court Presence	Total New Drug Courts In Judicial Circuit Under H. 3322
1	Calhoun, Orangeburg	Dorchester, Calhoun	4
2	Bamburg, Barnwell	Aiken, Bamberg, Barnwell	5
3	Lee, Sumter, Williamsburg	Clarendon, Lee, Sumter	6
4	Chesterfield, Darlington, Dillon	Chesterfield, Darlington, Dillon, Marlboro	7
5		Kershaw	1

6	Chester, Fairfield	Chester, Fairfield	4
7	Cherokee	Cherokee, Spartanburg	3
8	Abbeville, Laurens, Newberry	Abbeville, Greenwood, Laurens, Newberry	7
9	Berkeley	Berkeley	2
10			0
11	McCormick, Saluda	Edgefield, Lexington, McCormick, Saluda	6
12	Marion	Marion	2
13	Pickens	Pickens	2
14	Allendale, Colleton, Hampton, Jasper	Allendale, Colleton, Hampton, Jasper	8
15		Horry, Georgetown	2
16	Union	Union	2
Total New Drug Courts Under H. 3322		61	

Mr. Maldonado described the purpose of H. 3322 as a follow-up to sentencing reform legislation passed in 2009:

[H. 3322] was a “Part Two” to the Sentencing Reform Act...[W]e had a lot of success from that. The state saved a lot of money, the prison population...reduce[d]...almost 22% since 2010. So, they wanted, in 2017, to have a “Part Two.” They brought in a lot of the same stakeholders to try to come up with...the second part of reducing the jail population and try to focus on rehabilitation and more community programs. So, we met for, basically, a year with evidence-based programs like Pew and all the other stakeholders to try to draft [the bill]. We got the ideas; we met with rehabilitative experts. So, that’s where the initial idea for the bill came about (Personal Communication, October 23, 2019).

As Mr. Maldonado explained, the focus of H. 3322 was on rehabilitation and community programs which would amplify the success of the 2009 sentencing reform legislation. From that legislative purpose, came the idea to incorporate § 302: Drug Court Program Act into the bill:

One of the themes coming out of that [bill] was the drug courts and how we can help people with dependencies...We already had a bill, S. 50, that had been copied several times so that was a logical place to start was just drop that bill into part of this to help it get a chance to pass, if it passed (Maldonado, Personal Communication, October 23, 2019).

Though § 302: Drug Court Program Act is not a rider¹ provision as it is germane to the bill's purpose, its inclusion in H. 322 was intended to increase the chance that S. 50 passed in some form.

The bill would standardize the implementation of existing drug courts while codifying the operation schema of newly established drug courts. H. 3322 (2019) emphasizes the role of the NADCP's key components in "develop[ing] best practices to be utilized by [all drug court] program[s]." This provision provides a clear directive to implement drug court best practices, discussed in the earlier review of the literature, across all program components. Further, the bill requires that the NADCP's key components be incorporated into the training of each judicial circuit's drug court management team (discussed later in this chapter) to ensure all team members are aware of and incorporating into the management of each drug court current drug court best practices.

A "drug court program annual report" must be submitted by each judicial circuit drug court program to the state's Commission on Prosecution Coordination²

¹ A rider describes a provision or amendment to a bill that is unrelated to the subject matter of the bill, usually included to pass a controversial piece of legislation.

² The Commission on Prosecution Coordination is a state agency which "enhance[s] the professionalism and effectiveness of South Carolina's Solicitors and their staff... as well as

...providing the total number of participants from original nonviolent offenses; the total number of participants that successfully completed the drug court program; the total amount of fees collected; and the total revenue remitted to the municipalities, counties, and the State for the prior fiscal year. The Commission on Prosecution Coordination may establish additional guidelines for the annual reports (H. 3322, 2019).

Assessing the total amount of fees collected by drug court programs and revenue remitted to various levels of government will aid in the evaluation of socioeconomic cost reductions produced by this drug court. Assessing the total number of individuals that participate in and successfully complete drug court programs will also aid in measuring programmatic success. However, without collecting long-term data on recidivism and drug dependency rates among participants (both those who complete the program and those who do not), these parameters of program success cannot be evaluated. Notably, the social benefits of reductions in recidivism and drug dependency cannot be factored into measures of reduced socioeconomic cost. Given the Commission on Prosecution Coordination's discretion in developing additional requirements for the annual reports, this data may later be included for the purpose of assessing long-term program outcomes such as reduced recidivism and drug dependency.

The annual report is also required to be sent by each judicial circuit drug court program to

...the [South Carolina Legislature] Sentencing Reform Oversight Committee for evaluation of the diversion programs and treatments...; the effectiveness of each program; and any need for additional programs, program modifications, or repeal of existing programs. In evaluating the programs and treatments, the Sentencing Reform Oversight Committee may request information on the evidence-based practices used in each program or treatment to identify offender risks and needs, and the specific interventions employed in each program or treatment to identify criminal risk factors and reduce recidivism (H. 3322, 2019).

This process evaluation¹ is a key measure to ensuring that each judicial circuit's drug court program utilizes the NADCP's key components for drug court best practices. Establishing intent to continually improve and modify programs to meet drug court best practices will, in turn, maximize program outcomes—in terms of reduced recidivism, socioeconomic cost, and drug dependency—associated with successful drug court programs. The reference to offender risks and needs and criminal risk factors indicates a promising public health framework that can be used in the evaluation of these programs. It also indicates recognition of the need to identify and serve high-risk, high-need offenders, a target population discussed in the following section.

The policy implications created by the bill's inclusion of a “drug court annual report” must be considered. By holding circuit solicitors, judges, and other management team members accountable for program compliance with best practices and program outcomes, the state would increase its jurisdiction over judicial circuit through H. 3322. If a drug court program was deemed by the Commission on Prosecution Coordination or the Sentencing Reform Oversight Committee to be performing poorly on the annual report, those governing bodies would have the authority to modify, repeal, or otherwise intervene in the operation of the program. These clauses may lead judicial circuits to falsify self-report data on annual reports. Granting the Legislature and a state agency additional power over judicial circuits could also potentially be used as a precedent to interrogate or revoke the credentials of (or otherwise sanction) a circuit solicitor, judge, or other elected or appointment member of the management team.

¹ A process or implementation evaluation “determines whether program activities have been implemented as intended and resulted in certain outputs...[to] strengthen your ability to report on your program and use information to improve future activities” (CDC, 2014).

Target population.

The target population identified by H. 3322 (2019) consists of adult and juvenile offenders charged with nonviolent crimes. Offenders currently charged with a violent crime and those with a history of violent crimes, specifically those who have “been released from incarceration in the previous five years for a violent crime” or are “subject to a restraining order” are excluded from participating in any drug court program under H. 3322 (2019). Automatic exclusion of violent offenders is inconsistent with the NADCP’s key components and prohibits a significant segment of high-risk, high-need potential participants from benefiting from drug court programs as well as reducing the impact of these programs. The legislation does not specifically mention exclusion of offenders with weapons charges, however, those charges are typically concurrent with violent offenses.

In one interview, former U.S. Attorney Bill Nettles noted the interlocking nature of violence with drug addiction and drug dealing as a function of addiction: “The reality of it is: as long as drugs are illegal...there’s [going to] be guns, there’s [going to] be violence....[T]here’s a way that you can look at the facts and determine if the violence and the guns was...just part of the drug dealing” (Personal Communication, October 4, 2019). Mr. Nettles also discussed the role of data on long-term program outcomes for high-risk, high-need offenders in developing best practices:

When we first started, we had to be cognizant of the fact that in the early stages of something like this [we were not] able to look at it on the capita of data to show how it works ...The only reason we [excluded violent offenders] was...[in case] somebody got in drug court and they went out and did something violent during the course of all that. I think the risk is very, very low... but I just couldn’t afford to risk that (Personal Communication, October 4, 2019).

The exclusion of violent offenders from drug court programs under H. 3322 is an outdated practice which should be reconsidered given current drug court best practices literature, particularly the recommendations of the NADCP's key components.

H. 3322 (2019) does not require offenders to plead guilty or nolo contendere to the relevant charges or for a judgement of guilt to be entered. Additionally, any participant who successfully completes the drug court program "...is subject to having the charge or charges dismissed...and there must be no record maintained of the nonviolent offense." This may incentivize eligible offenders to participate in the drug court program because they do not face the risk of having entered a guilty plea should they be terminated from the drug court program or have a criminal record of the relevant charges upon program completion. Interviewee A commented on the benefits of this incentive to participate in terms of employment opportunities after successful program completion:

...not having a record doesn't impact you being able to get a job and be gainfully employed so you're not forced to do things like selling drugs or using drugs to get ahead or just stay afloat. I think that gives you an opportunity to have a real option for treatment without penalty (Personal Communication, April 9, 2019).

However, Mr. Maldonado explained the reasoning behind post-adjudicatory program eligibility included in S. 639 and S. 50 as well as the S. 50 provision for eligible offenders to plead guilty without a judgement of guilt being entered, neither of which are included in H. 3322:

I think some of the prosecutors...felt that [in a strictly pre-adjudicatory program] you're taking away an opportunity for after conviction that's also a time that we can help these people. If we put them on probation and they still have drug problems,...this gives them a chance to...solve their problems...[The S. 50 guilty plea provision] was a way to...satisfy both sides...The prosecutor can get the conviction and not worry about having to maintain the case... for however long. And then the defense still gets the chance to be able to go through the program without it being on the record (Personal Communication, October 23, 2019).

These provisions were likely excluded from H. 3322 not because they deter participation, but, rather, because they create a potential loophole for circuit solicitors to underutilize pre-adjudicatory programs:

Some senators felt that if you [included a post-adjudicatory provision], that would push all of the defendants into a conviction and giving the solicitors the opportunity to do that would just push everybody into probation and a conviction... [T]he public defenders, obviously, wanted to have it pre-adjudicatory but as far as the defendants: the ones that were getting out and wanted help, I don't know that that mattered as much to them...[I]f you couch that with the success of the program [given that] after probation can lead to some kind of dismissal...then, obviously, if they're successful... that would be the best thing (Maldonado, Personal Communication, October 23, 2019).

Conversely, the provision of H. 3322 (2019) requiring eligible offenders to pay a \$150 enrollment fee as well as continuing service fees for “treatment, education, supervision, and any other services provided through the program” may deter key segments of the target population from participating in drug court programs. The legislation does stipulate that “participation in a drug court program may not be denied due to a person's inability to pay these fees. If a person is deemed unable to pay, the fees...may be waived or reduced” (H. 3322, 2019). This provision may ameliorate the exclusionary effect of the fee requirement.

Incentives & sanctions.

There is no mention of incentives or sanctions or behaviors associated with either beyond “violat[ion of] the conditions of a drug court program” in the legislation (H. 3322, 2019). The bill does mention that violation of drug court program rules may result in a participant being “recommended for judicial termination from the program and, if terminated, [the participant] must have the offense reinstated...” Sanctions and incentives play a critical role in drug court best practices to ensure participant compliance in drug court programs, as Mr. Maldonado expressed: “[It] would be essential...to have [participants] held accountable...and hav[e]

somebody looking after them, understanding that even if they fail they're not [going to] automatically go back to jail" (Personal Communication, October 23, 2019). By omitting incentives and sanctions from the text of the legislation, H. 3322 fails to codify guidelines for this key component of drug court legislation and program implementation.

This absence may result in failure to follow drug court best practices and utilization of non-recommended strategies such as sanctioning participants due to relapse during program participation. Mr. Nettles articulated the necessity of balancing incentives and sanctions to ensure program compliance while not penalizing participants for relapse:

[W]hat the threat of going to jail will do and is effective in driving, is getting people to go get treatment...[A]s long as [participants are] getting treatment, we need to understand that relapse is a necessary part of drug addiction. And so, consequently, as long as you're...going to your psychologist, going to your addiction treatment, and actively engaged in the treatment, you get to stay out [of jail] (Personal Communication, October 4, 2019).

Mr. Maldonado reasons that inclusion of a post-adjudicatory eligibility provision (i.e. participation after placement on probation) may allow jail sanctioning to be levied more easily:

It's also the carrot and the stick thing because if they're on probation, sometimes when it gets very bad, you can revoke them and kind of...punish them more quickly, where[as], if it's pre-adjudicatory, you still have to take them to trial and have a conviction and they don't see the punishment as soon, so there isn't that kind of stick part of the program. There's good and bad in both of those (Personal Communication, October 23, 2019).

This perspective, however, does not account for low and middle-level sanctions which can be just as, if not more, effective in ensuring participant compliance. Given that H. 3322 (2019) does specify the inclusion of the NADCP's key components in drug court implementation, there may be a reasonable expectation that drug court programs will individually outline incentives and sanctions which follow drug court best practices, though this is not guaranteed.

Management team.

As outlined in H. 3322 (2019), each judicial circuit's drug court program would be "under the direct supervision and control of the circuit solicitor" who "may establish an Office of Drug Court Program Coordinator whose responsibility is to assist in the establishment and maintenance of the drug court program within the circuit." Overseeing the entire drug court system would be the Office of Statewide Drug Court Coordinator

...whose responsibility is to assist the circuit solicitor in each judicial circuit in establishing and maintaining a drug court program, to assist in developing and implementing drug court standards, to assist in developing and conducting training programs for the drug court and related personnel in the solicitors' offices, and to develop evaluation procedures to ensure timely and accurate collection of data regarding the effectiveness of the respective drug courts (H. 3322, 2019).

The Office of Statewide Drug Court Coordinator would serve a critical role in ensuring that drug court best practices, in this case defined as the NADCP's key components, are developed and uniformly implemented across all program standards in each judicial circuit's drug court program. The Drug Court Program Coordinator would monitor the evaluation of drug court best practices and program outcomes in each judicial circuit. This Office would ensure the validity of annual reporting data to hold judicial circuits accountable for implementation of best practices and program outcomes. The inclusion of a training provision for drug court personnel pursuant to the NADCP's key components indicates that management team members would exhibit competency in promoting equity and inclusion while delivering continuous care to program participants. Management team members include judges, prosecutors, defense attorneys, community corrections, social workers and treatment service professionals (National Institute of Justice, 2012). However, this language is not explicitly outlined in H. 3322 and it may not come to fruition should H. 3322 pass.

H. 3322 (2019) also includes a provision that “the circuit solicitor may contract for services with a county or municipality in the circuit and with appropriate service providers.” This provision may promote community engagement within each judicial circuit as circuit solicitors contract with local service providers to meet the particular needs of the target population served by a given judicial circuit drug court program. Mr. Nettles emphasized the role of community engagement in destigmatizing drug dependency and reducing tensions between law enforcement and communities most impacted by drug dependency during his tenure as U.S. Attorney General:

We did a lot of this with the community policing that we did....Calling it a war is horrible...because war is us versus them. It's police versus drug dealers. What it should be is: we're working on this as a community together to get people to a better place (Personal Communication, October 4, 2019).

Though H. 3322 does not indicate community engagement as a key component of the legislation, the inclusion of a provision to allow each circuit solicitor to contract with local providers within each judicial circuit is a promising step toward implementing this drug court best practice.

Mr. Maldonado indicated that circuit solicitors overseeing existing drug courts are already integrating continuity of care between management team members and engaging with the community effectively to ensure program success:

A lot of the counties that are doing this are doing it voluntarily. Solicitors are going...at night, outside of their regular schedules and having weekly meetings, weekly hearings with defendants and the judges and their doctors to try to help these people and they're basically just doing it out of their own pocket (Personal Communication, October 23, 2019).

This in-kind practice by circuit solicitors may meet best practices for management team members and be effective in driving successful drug court programs in some judicial circuits. However, standardizing these management team practices and codifying the role of the circuit solicitor as the administrator of drug court best practices like continuity of care and community engagement would ensure compliance among all drug court programs, new and existing.

Duration.

Program duration is not included as a component of H. 3322 Section 302: Drug Court Program Act (2019). This critical component is inconsistent in the literature that recommends program minimum participation lengths varying on average from 12 to 18 months, though most research indicates that participants require longer than the minimum participation length to successfully complete drug court programs (King and Pasquarella, 2009; Alden et al., 2004; National Drug Court Resource Center (n.d.); Roman, J. K., Rossman, S. B., & Zweig, J. M., 2011). Even considering the inconclusiveness of the literature on program duration, establishing a minimum length of participation across all drug court programs in South Carolina under H. 3322 would ensure that each judicial circuit engages in a minimum standard of current drug court best practices. Inclusion of this legislative component would also generate consistency when collecting data on drug court program participation and outcomes across each judicial circuit. Mr. Maldonado speculated that the absence of a program duration provision in H. 3322 is likely due to pushback from circuit solicitors over existing drug court programs:

[Solicitors] have a feeling that every jurisdiction is different, everyone is going to have to handle it their own way and set up their own practices. As long as it meets guidelines, they can establish their own particular way of doing things, especially in the smaller counties versus the large counties [where]...there's a lot of local issues that can come up and the legislation wanted to allow for each jurisdiction to be able to do their own thing (Personal Communication, October 23, 2019).

Allowing each judicial circuit to tailor its drug court program to the needs of the area and population served is key to ensuring each program meets the unique needs of its target population. However, establishing a minimum program duration in the legislation would, arguably, set a bar for all programs to meet without interfering with each judicial circuit's ability to set additional duration requirements beyond the minimum.

Without a provision for program duration, H. 3322 also fails to address program phases, another drug court best practice. Dividing drug court programs into phases can serve as an incentive for participants through phase graduations. It can also be a critical factor in determining overall program duration should an aftercare phase be included. Aftercare can include management team follow-up with participants who successfully complete the drug court program as well as post-graduation programming such as vocational training and housing assistance. In discussing the purpose of H. 3322 in standardizing drug court practices across the state, Mr. Nettles contended

You [have to] help them get jobs....People who have jobs are less likely to be engaged in this. So that's [going to] mean job training. It doesn't take much...That North Charleston [drug court] program we did had...ten people...Six of them...graduated, got jobs, and got health insurance. I mean, their kids have got health insurance (Personal Communication, October 4, 2019).

Outlining program phases would also have implications for funding for drug courts through the Commission on Prosecution Coordination, a body that is responsible for “oversee[ing] administrative procedures for the drug court programs, including the maintenance and distribution of the designated drug court general fund” (H. 3322, 2019). Given the up-front cost of providing post-graduation services through an aftercare phase, despite the greater benefit of long-term socioeconomic cost reduction, the absence of this provision may de-incentivize the provision of adequate funding to each judicial circuit for implementation of this drug court best practice. Establishing a minimum program duration and program phases, including aftercare, in the language of H. 3322 would ensure consistent application of this key element of drug court best practices.

Summary & recommendations.

H. 3322 § 302: Drug Court Program Act demonstrates a strong legal framework for the standardization of existing drug courts across the state and the creation of new drug courts where they are previously lacking. The language of the bill is generally consistent with drug court best practices, however, there are several areas of the legislation that, if modified, would greatly enhance the capacity of H. 3322 to implement drug court best practices in all impacted drug courts, both existing and newly created.

- Expansion of program evaluation criteria to include long-term outcome data would permit the assessment of the overall impact of South Carolina drug courts on recidivism, socioeconomic cost, and drug dependency.
- Removal of exclusionary eligibility criteria such as disallowing violent offenders from participating and requiring a program application and participation fee would better serve the high-risk, high-need target population.
- Inclusion of language on incentives and sanctions consistent with the current literature on drug court best practices will produce consistency in the application of this program component across all drug court programs while also generating greater returns on long-term program outcomes due to greater participant compliance and higher graduation rates.
- Outlining the importance of community engagement and establishing program duration and phases, including a post-graduation aftercare phase, will increase consistency of the legislation with drug court best practices, contribute to long-term program outcomes, and establish guidelines for necessary funding appropriation and distribution.

The inclusion of language on the NADCP's key components defines an expectation of drug court best practices in the implementation of H. 3322. If H. 3322 is codified, this language may adequately produce the modifications outlined above as the legislation is operationalized, evaluated, and adapted overtime. However, guaranteeing these drug court best practices within the bill itself would ensure consistent application across all impacted drug courts.

H. 3322 impact on parameters of successful drug court legislation & program outcomes.

There is reason to believe that standardization of existing drug courts under H. 3322 to meet current drug court best practices would increase the positive impact of existing drug court programs given by the limited available evidence. The addition of 61 new drug courts in counties across South Carolina would likely produce additional positive impacts on long-term program outcomes, though the total impact of H. 3322 on long-term outcome parameters, including: reducing recidivism, socioeconomic cost, and drug dependency in South Carolina, cannot yet be estimated. This is due, in part, to the inconsistency in the current long-term outcome data on drug court programs in South Carolina, with some drug court programs providing only limited data with regards to long-term program outcomes. Standardizing data collection methodologies and requiring all judicial circuits to provide data on long-term program outcomes under H. 3322 would greatly benefit these programs.

Reduced recidivism.

Recidivism rates among existing South Carolina drug court participants vary. In a self-report survey of currently operating drug courts in South Carolina conducted by the South Carolina Commission on Prosecution Coordination (2018), most drug court programs do not provide estimated recidivism rates, frequently citing lack of resources available to track such

data. The Second Judicial Circuit notes in its self-report that "...there is some concern about how recidivism is to be defined" and questions the length of time participants should be tracked after graduation, whether rates should include subsequent arrests or only convictions, and whether rates should include all participants or only successful program graduates¹.

Among judicial circuits that do provide estimates, recidivism rates among drug court program graduates range from 0-28% (South Carolina Commission on Prosecution Coordination, 2018). However, as considered by the Second Judicial Circuit's self-report, it is unclear whether these rates include all subsequent arrests or strictly arrests resulting in conviction as well as for what length of time after program graduation this data was collected. These methodological concerns along with the lack of data provided by a majority of drug court programs makes estimating the total current savings of drug court programs due to reduced recidivism impossible to estimate. This, in turn, renders an estimate of the additional cost savings due to H. 3322 all but impossible.

Reduced socioeconomic cost.

A Statement of Estimated Fiscal Impact on H. 3322 published by the South Carolina Revenue and Fiscal Affairs Office estimates that operating a South Carolina drug courts cost, on average, \$180,000 annually (Pitts, 2019). Self-reporting drug court programs estimate an annual operating cost ranging from \$26,750 (not including management team salaries) to \$292,700 (South Carolina Commission on Prosecution Coordination, 2018). Drug Court operating costs likely vary based on the number of participants served by the court annually. Establishing adult and juvenile drug courts in every county in South Carolina and bringing existing drug courts into compliance with the provisions of H. 3322 (2019) (i.e. hiring additional staff, conducting

¹Limitations in measuring recidivism among drug court graduates are identified throughout the literature (Chrétien, Latimer, & Morton-Bourgon, 2006; Bhati, Roman, & Townsend, 2003).

training on the NADCP's key components, generating a drug court annual report in each judicial circuit, etc.) is estimated in the Statement of Estimated Fiscal Impact to "require an increase of approximately \$3,000,000 to \$5,400,000 in annual recurring General Funds" (Pitts, 2019). As an example of drug court program operating costs, sanction of three-day jail sentences administered by all problem-solving courts and supervision programs are estimated to cost \$3,265,176 (Pitts, 2019). However, the estimated cost of jail sanctions for drug courts alone is not provided.

Additional funding allocated for H. 3322 would "shift the cost of managing offenders currently housed in state correctional facilities to solicitors, courts, local law enforcement, and the Department of Probation, Parole and Pardon Services (Pitts, 2019). The Fourth Judicial Circuit reports that "...the cost of incarcerating 40 inmates for a year...cost[s] the State \$797,400. In comparison, the approximate cost of operating a drug court and serving 40 participants for one year is \$292,700," generating a cost saving of \$504,700 for 40 participants. The Eleventh Judicial Circuit estimates that removing participants from county jails produces a cost-saving for the county of \$58 per participant per day. The Twelfth Judicial Circuit notes that its adult drug court program participants are employed full time and pay taxes, child support, and other financial obligations, contributing to economic activity in the state and preventing social costs associated with incarceration (South Carolina Commission on Prosecution Coordination, 2018).

Mr. Nettles identified the multigenerational impact of these cost savings:

The number one factor that determines whether a child is going to go to prison or not is whether... their parents went to prison. That is the number one risk factor. So when you start to talk about putting in place a program where a kid has got a dad, you start reducing the chance that the kid is going to go to prison. Which saves us money multigenerationally (Personal Communication, October 4, 2019).

Increased social cost savings in counties across South Carolina are only speculative and the significance of these savings cannot yet be estimated. Pitts (2019) estimates that the cost savings in reduced prison populations of drug offenders resulting from all problem-solving courts and supervisory programs would save the state \$9,501,674 by 2049, though estimated cost savings from drug courts alone is not provided.

Reduced drug dependency.

No existing drug court program in South Carolina provides data on participant health outcomes relating to reduced drug addiction (i.e. relapse post-graduation). Therefore, increases in positive outcomes along this parameter among existing drug courts due to implementation of drug court best practices under H. 3322 cannot be estimated. Further, this lack of data on estimated reductions in drug dependency among existing programs prevents the application of such data to new drug courts created under H. 3322. Additional social cost savings due to reduced healthcare system burden and other costs associated with drug addiction under H. 3322 cannot be estimated. However, Mr. Nettles echoes the literature on drug dependency treatment, expressing that “relapse is a part of addiction so you can’t judge [program success] just on whether [graduates] relapsed or not...Do you have people getting jobs? Are they able to function?” (Personal Communication, October 4, 2019). Mr. Maldonado reiterated this point while emphasizing the importance of H. 3322’s provision allowing previous drug court participants to be eligible for participation as a means of impacting long-term outcomes:

[O]ne of the things that the experts were telling us [was] that drug offenders are going to relapse and that’s just the natural tendency of it. So, having the opportunity to continue and get back into a program if you do relapse, the experts were telling us was vitally important to [these programs] (Personal Communication, October 23, 2019).

This perspective of drug dependency recovery may explain the lack of data among existing drug courts in South Carolina. Rather than measuring relapse rates among drug court graduates, a more productive measure of positive health outcomes may be found indirectly through social functioning and productivity outcomes (i.e. employment, housing access, community involvement, etc.).

Discussion.

Likelihood of H. 3322 passage.

There is mixed evidence with regards to the likelihood that H. 3322 will secure passage. The bill has both Republican and Democratic cosponsors, indicating that it has bipartisan support in the House. However, as Mr. Maldonado explained, the size of the omnibus legislation has led to much debate in the House over various provisions and will likely continue to stall its movement through the legislature:

[T]he way I describe a bill this big is: there is something in there for everyone to hate. So, when it's this big...each...representative will not like one thing, so there's a lot of reasons for them to just kill the bill entirely. Sometimes, though, when you get enough push, sometimes right near the end they get motivated and things happen...you never know. If this was the beginning of a two year session and we still had two years to go, I think we could possibly do it...[I]t would be very hard to get this through in just one session without...the Senate...having hearings on our version in this off season now to get this ball really rolling...[but] I'm not seeing anybody trying to...get the hearings started (Personal Communication, October 23, 2019).

While a bill like § 302: Drug Court Program Act is less likely to face harsh scrutiny when surrounded by numerous other debatable provisions in H. 3322, the challenges in debating such a large bill may halt the legislation's progress. Additionally, Mr. Maldonado indicated that outside political factors may influence the bill's likelihood of passage:

There are also other things like the heartbeat bill and the election and...There's so many other things that are [going to] be coming up. Guns is [going to] be a big

topic. So, there's [going to] be a lot of things to distract them. So, it would take an unusual push to get this thing through in this legislative session (Personal Communication, October 23, 2019).

The timing of the bill in this legislative cycle may diminish its likelihood of passage, regardless of support on either side of the isle.

One critical element in securing passage of H. 3322 is urgency. Mr. Maldonado commented on the importance of communicating to legislators the necessity of § 302: Drug Court Program Act as well as the success of previous sentencing reform legislation:

[T]here's not a real desire or need for [drug court legislation] right away, at least in [the legislators'] minds because if solicitor really wanted to do it they could basically just do it already...[I]f people went back to 2010, and saw the success that that bill had...[when] we were starting this up in 2017 and had the hearings, the members got really excited with the success. They wanted to do it again, wanted to build on that success (Personal Communication, October 23, 2019).

Previous sentencing reform legislation can serve as valuable evidence of the impact of criminal justice reform bills like H. 3322 on long-term outcomes (i.e. reductions in drug dependency, recidivism, and socioeconomic cost).

Stakeholder support within each judicial circuit is also key to securing passage of H. 3322. "It's a great program but it needs the buy-in from the...judges and the solicitors" (Maldonado, Personal Communication, October 23, 2019). Annual reporting provisions, including accountability clauses which sanction judicial circuits that do not implement drug court best practices or produce sufficient program outcomes, may diminish support by judges, circuit solicitors, and other stakeholders in the management team who would likely oppose greater oversight of judicial circuits by the state. Lack of detailing on best practices in the legislation is likely an attempt to gain support from stakeholders who wish to maintain a strong territory over regulation of judicial circuits as indicated by Mr. Maldonado:

That is definitely down to the local jurisdictions. It is pretty clear that nothing will get passed if we try to micromanage the locals and they will fight back very hard. Some programs are successful and they don't want anything that the state does to come down to mess that up (Personal Communication, October 23, 2019).

Stakeholder engagement must be prioritized by sponsoring legislators in the upcoming session if H. 3322 is to pass in both the House and Senate during this cycle. The importance of swift action on this piece of legislation must be stressed as delaying this bill only reduces its potential impact.

The third key to ensuring H. 3322 is successful in this legislative session is the provision of adequate funding to support § 302: Drug Court Program Act. Mr. Maldonado elucidated on this point:

It really just comes down to money too. [T]hat's debated in the finance budget part of this, and so that's completely separate and would have to survive that kind of vote... We don't tie the money to the bill and so it wouldn't be effective, really, without the money (Personal Communication, October 23, 2019).

The success of H. 3322 in the legislature may be dependent on supporting appropriations. Given that appropriations bills are debated and passed as an entirely separate legislative effort to mandate bills, it cannot be estimated how the state's budget may influence passage of H. 3322.

The various factors influencing the legislature in its debate (or lack thereof given competing political demands) over H. 3322 make its likelihood of success difficult to predict. Division over provisions § 302: Drug Court Program Act which differ from similar drug court bills may halt its progress. Additionally, debate over other sections of the bill and other competing political priorities may divert attention away from the urgency of measures like § 302: Drug Court Program Act. Assuring legislators of the impact of H. 3322, engaging stakeholders from each judicial circuit, and passing appropriations bills to support H. 3322 would aid its progress in the legislature. However, the obstacles blocking the bill in this legislative session and the bulk of political work still needed to push the bill through diminish its odds of passage.

Other drug dependency and mass incarceration policy interventions.

Drug courts are only one among several proposed policy interventions to combat the criminalization of drug dependency. Alternate policy interventions range in their departure from the current state of drug sentencing policy with some considered moderate changes within existing criminal drug laws and others viewed as politically extreme overhauls of the criminal justice system to reframe drug dependency as a public health problem. The support for drug courts must be balanced against their political feasibility and implementation challenges and compared to similar assessments of other policy interventions. Only then can we truly present a realistic picture of the potential policy interventions that are likely to affect change in drug dependency and mass incarceration. Other policy intervention frameworks discussed in stakeholder interviews included: reentry court, community-based treatment and criminal justice system diversion, and decriminalization of illicit substances. A consideration of these policy interventions in comparison to drug court programs (i.e. H. 3322 § 302: Drug Court Program Act) is indeed warranted.

Reentry courts are similar to drug courts in that they involve drug treatment in conjunction with criminal justice system contact. Reentry courts assist formerly incarcerated individuals in their reentry into society by connecting them with resources for housing, employment, and other needed services such as drug dependency treatment. The purpose of these courts is to impact long-term outcomes such as drug dependency, recidivism, and socioeconomic costs (Vance, 2011; Ayoub, Carey, Cissner, Kralstein, Lindquist, Malsch, & Rempel, 2018; Fetsco, 2013). As compared to H. 3322, some advocates contend that a reentry court policy intervention may have a greater likelihood of passage than drug court legislation:

...[I]f I were [going to] go back and do it again, I would have done reentry court rather than drug court because... I believe that it would have been a less of a

political lift to do reentry court than drug court because there you're basically talking about people who... you don't have to make the argument that they're not [going to] serve jail time... They've already done their jail time... You're just helping them to matriculate back into society (Nettles, Personal Communication, October 4, 2019).

Despite their potentially greater political feasibility, reentry courts fail to divert drug dependent persons from incarceration, criminal records, or other associated negative outcomes. The introduction of reentry courts would likely face fewer political challenges; however, they would likely not have as great an impact on long-term outcomes for drug dependent persons.

Community-based treatment programs offer a strong framework for diversion of drug dependent persons from the criminal justice system. In this framework, drug dependent persons are referred to community-based treatment by law enforcement. Rather than criminalizing drug dependency, this framework allows drug dependent individuals to avoid any further contact with the criminal justice system. The purpose of these programs is to ameliorate the criminalization of drug dependency while impacting long-term outcomes relating to drug dependency and mass incarceration (Center for Health and Justice at TASC, 2017; Substance Abuse and Mental Health Services Administration, 2019; Charlier, 2015). One interviewee espoused the benefits of a community-based treatment framework:

I think [a community-based treatment programs] is more [effective] basically for the same reasons I've said before. You avoid...that stigma of...[going] to jail which leads to other issues... But I think that having that incentive of having no record and getting treatment for a problem would be very effective (Interviewee A, Personal Communication, April 9, 2019).

This framework may have an equal or greater impact on long-term outcomes relating to drug dependency and mass incarceration. However, as Mr. Maldonado explained, a dearth of community-based treatment programs in South Carolina may make such a framework challenging to implement:

Being a former prosecutor, we had a number of defendants who had...drug dependency problems and...back then there was a few more programs that we could send them to around the state...Now, there's almost none (Personal Communication, October 23, 2019).

The lack of available community-based treatment programs impedes reducing drug dependency in South Carolina. Drug courts are both easier to implement and more politically feasible because they address drug dependency through the criminal justice system, rather than attempting to establish a new normative framework for understanding drug dependency which is treatment-based rather than punitive.

Drug decriminalization is one of the most divergent frameworks among drug dependency and mass incarceration policy interventions. Under such a framework, the use and low-level distribution of drugs are removed from the criminal code, and they are not otherwise penalized through coercive treatment. One purpose of drug decriminalization is to eliminate criminal justice system contact for drug dependent persons (Sher, 2003; Drug Policy Alliance, 2017; Chawarski, Narayanan, Singh, & Vicknasingam, 2018). One interviewee summarized this point:

I think decriminalization's a big part of it...But I think that we do need to recognize...that the criminal justice system is not the place to be addressing this issue...[T]reatment is a function of drug courts and I think that if we could destigmatize treatment...If you get people in treatment and you don't get them into the criminal justice system then you don't even need drug courts, arguably (Nettles, Personal Communication, October 4, 2019).

The political feasibility of this policy is low given the conservative social and political nature of the state. Additionally, the lack of community-based treatment programs in South Carolina makes this a challenging policy intervention. Despite the potentially high impact of drug decriminalization on long-term outcomes, the net effect of this policy would likely not be as far reaching as a drug court policy intervention like H. 3322 § 302: Drug Court Program Act.

Each of the policy intervention frameworks considered cannot be fully assessed without legislators putting forward specific legislative proposals. More extensive research on legislative proposals within each of these frameworks should be conducted. Such analyses should carefully consider the political climate and the landscape of drug treatment when comparing policies' political feasibility and deliverability. Analysis of H. 3322 is relative to the current state of drug dependency criminalization, application of best practices, potential impact, and political and implementable feasibility in South Carolina. Assessments of policy interventions in other states may not yield the same results.

Drug courts offer one promising policy intervention to impact long-term outcomes relating to drug dependency and mass incarceration. H. 3322 § 302: Drug Court Program Act represents a shift in our understanding of drug dependency and it steers us away from criminalization and toward a public health framework. As one interviewee concluded:

The thing about drug courts is that that it does [work]... I mean incarceration is not the answer, right?... We really need to be looking at this as more of a public health problem and not a criminal justice problem (Nettles, Personal Communication, October 4, 2019).

This shift in understanding permits a myriad of policy interventions to emerge in response to the issues of drug dependency and mass incarceration. South Carolina, other states, and the federal government should carefully consider available and emerging policy interventions, their grounding in best practices, their long-term impact, and their political feasibility. However, the critical outcome of these analyses is action. Without action, these policies cannot affect any change in drug dependency and mass incarceration and these issues will persist for the foreseeable future.

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Appendix A: Interviewee A Interview Schedule

1. In your opinion, is drug dependency a significant problem for inmates in South Carolina? Do many inmates experience drug dependency before, during, and/or after their period of incarceration?
2. Can you describe any drug dependency treatment programs that are currently in place for inmates housed under SCDC?
3. If such programs are available, are those programs restricted to certain populations or institutions? If those programs are restricted, how does that impact inmates who do not have access to those programs?
4. Is drug dependency a comorbid condition with other socially determined health outcomes such as mental illness among SCDC inmates?
5. In your opinion, are drug court programs more, less, or equally as effective as current drug sentencing policies in treating drug dependency? Why?
6. Are there any potential pitfalls of drug court programs as an alternative to current drug sentencing policies?
7. In your opinion, are community-based treatment and criminal justice system deflection programs more, less, or equally as effective as current drug sentencing policies in treating drug dependency? Why?
8. Are there any potential pitfalls of community-based treatment and criminal justice system deflection programs as an alternative to current drug sentencing policies?

Appendix B: Bill Nettles Interview Schedule

1. Please share some background information on your experience and expertise with drug courts.
2. In your opinion, what are the key elements of a drug court program? What role does equity and inclusion play in those elements?
3. Should there be restrictions on the type of offenders who are eligible to participate in drug courts? That is, should these programs exclude violent offenders or offenders with co-morbid conditions like mental illness?
4. Are you aware of any model drug court programs that South Carolina should use as a basis for its own drug courts?
5. What are the strengths, weaknesses, and inconsistencies in South Carolina drug courts? Can you identify any areas that could be improved or expanded upon?
6. How should we measure success with regards to drug court programs?
7. Do you support the recent efforts by the state legislature to enact statewide standards for drug court programs? Why or why not?
8. What recommendations, if any, would you make to the legislature with regards to drug court program delivery?
9. Are drug courts the best solution available to addressing drug dependency and mass incarceration? What other policy interventions might you recommend?

Appendix C: Bob Maldonado Interview Schedule

1. Please share your experience as legislative counsel for the Senate Judiciary Committee.
How long have you served in this position?
2. Can you provide any insight into the current drug court legislation that is being considered by the legislature?
3. In your opinion, why have previous drug court bills (e.g. S. 1317, 2012; H. 4970, 2012; S. 141, 2013; S. 327, 2014; S. 163, 2017) failed to gain support by the full legislature?
4. In your opinion, is it important that S. 639 contain language with regards to post-adjudicatory program eligibility (i.e. offenders admitted to the program after conviction and placement on probation)?
5. What is the likely impact of such an eligibility provision? Could this provision deter otherwise eligible offenders from participating in a drug court program?
6. Why do you believe S. 50: Drug Court Program Act, includes a provision regarding the eligibility of defendants who plead guilty without a judgement of guilt being entered?
What is the likely impact of this provision?
7. Why do you think S. 50 include a provision that excludes previous participants from eligibility in a drug court program? Could this provision lead drug court programs to underserve otherwise eligible, drug dependent persons?
8. Why do none of the drug court bills being considered by the legislature include language regarding the duration of drug court programs?
9. Will you speculate as to the likelihood that H. 3322 or another current drug court bill (i.e. S. 639 or S. 50) will pass in this legislative session? What are its chances of passage?

10. Given your response, what changes, if any, should be made to the legislation in order to secure its passage by the legislature?