



# Bulletin

Bureau of Justice Assistance

## Drug Night Courts: How Feasible Are They? Assessing Cook County's Example

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**T**he filing of drug cases in felony courts has increased significantly over the last several years. In many jurisdictions, increases in caseloads seriously strain the capacity of courts to process both narcotics and other felony cases.

Courts have adopted various methods to alleviate the strain. For example, the Bureau of Justice Assistance (BJA) has promoted better case management through its differentiated and expedited case management programs in selected courts across the country. BJA has also supported the efforts of State court leaders to maximize the operational effectiveness of trial courts through its Court Performance Measures and Standards Program. It has sponsored an analysis of recidivism patterns and long-term costs associated with this processing of cases through special drug courts. In addition, BJA's structured fines program offers court leaders a viable alternative sanction to incarceration.

But improved case management, operational reforms, and establishment of special drug courts are, in many situations, insufficient to cope with the massive influx of felony filings. Courts are being forced to consider additional resources—new judges, prosecutors, public

defenders, probation officers, support staff, and courtrooms. However, the cost of building new courtrooms and offices is high and, for some jurisdictions, prohibitive.

One way to reduce these costs substantially is to make existing courtrooms serve double duty by adding an evening shift. In a number of ways, it makes sense for evening shift calendars to contain narcotics cases. These are usually the most numerous felony cases, taking up half of the calendar in some felony courts. Furthermore, narcotics cases are relatively easy to dispose. Finally, they seldom require jurors or civilian witnesses, who might be reluctant at night to travel to court locations in high-crime neighborhoods.

Although evening operation is an attractive concept, concerns arise about efficiency, practicality, and quality of justice. These need to be carefully weighed before making decisions as to the advisability of implementing night sessions. The present research was undertaken to address such concerns in its assessment of drug night court operations. Cook County, Illinois, turned out to be the only court in the country that had a drug night court. Consequently, much of this report is based on that experience.

In Cook County the researchers conducted lengthy interviews with administrators, surveyed night court staff, collected data from case records, and observed night court operations first hand. Presiding Judge Thomas Fitzgerald and many others helped the research team gain access to the courtroom and court file data needed for their assessment. The project also conducted a survey of courts in the Nation's 50 largest counties to find out whether those courts had any current evening operations or had used them in the past, and whether the courts were receptive to the concept of evening operations for drug cases.\*

## Efficiency Issues

Some officials in Chicago and other cities expressed concern about whether night courts could be as efficient as day-time operations. Certainly staff fatigue is a greater problem at night than during the day. Night operations are harder to supervise because most administrative staff of criminal justice agencies are not present.

Unlike day court, a night court that finishes its calendar early cannot be called upon to accept overflow from other courtrooms. Also, information essential to adjudicating cases (probation or drug treatment history, other pending cases, etc.) may be harder to acquire at night.

These are among the legitimate issues that need to be addressed by jurisdictions considering evening operations. The data collected in Cook County indicated no inefficiency in the operation of drug night courts. Indeed, processing time of narcotics cases has been dramatically reduced since the drug night

courts were established there. Presiding Judge Fitzgerald told the research team that he had hoped for 5,000 dispositions annually from the new narcotics courts. During their first year of operation, they actually disposed of 9,700 cases.

The sample data show a large reduction in narcotics cases in the time-frames from case assignment to sentencing after night courts opened. Median time to disposition fell from 245 days to just 86 days. The mean number of court dates per narcotics case dropped from about 11 prior to the night courts to just over 6 after their inception.

Moreover, there has been a significant decrease in processing time for other felony cases since the night courts opened. The reductions in processing time for narcotics cases may result from better case management and a new, enthusiastic crew of judges in the drug night courts.

As for the concern that case information may be harder to obtain at night, a survey found that 57 percent of the night court staff believed that access to information was a greater problem at night than for day court staff. However, observation of the night courts uncovered no evidence to that effect, nor did this observation support the contention that adjudication was delayed when information was immediately unavailable.

The possibility cannot be ruled out that even more impressive gains in efficiency could have been made by implementing special drug courts during regular court hours. It is clear, however, that great gains in the efficiency of processing narcotics cases coincided with the opening of the drug night courts in Cook County.

## Principal Findings

This assessment of the feasibility of establishing night courts for narcotics cases drew heavily on the experience of Cook County, Illinois, Circuit Court. To summarize the findings:

- Night operations can be quite efficient. Coincident with setting up its drug night courts, Cook County cut processing time for narcotics cases dramatically.
- Those wishing to set up drug night courts need to be vigilant in order to ensure that the quality of justice in narcotics cases is not compromised. In Cook County research found that the establishment of drug night courts coincided with more lenient sentences, fewer trials, and a lower rate of representation by private attorneys for narcotics defendants. All but the last consequence likely resulted from segregating narcotics cases together with greater emphasis on productivity, rather than from evening operations per se.
- Quality staff can be successfully found for evening hours. Cook County has shown that there are a number of innovative ways to recruit motivated people to staff night courts.
- In order to maintain high morale and efficiency, however, those considering evening operations must be alert to special problems their staff members may encounter when working at night.

\* A monograph titled *Assessment of the Feasibility of Drug Night Courts* (NCJ 142415) presents the authors' findings in greater detail and names others who, like Judge Fitzgerald, assisted in their study. For information on its availability, readers may call the BJA Clearinghouse, toll free, at 1-800-688-4252.

## The Quality of Justice

Some officials express concerns about the quality of justice in Cook County's drug night courts. The drug night courts are seen by some as promoting "assembly-line justice." Specialization and the push for dispositions are seen as "routinizing" case processing at the cost of the rights of the accused. (Similar concerns were heard in other cities that have set up specialized drug courts, the criticism being attributable to *segregating* narcotics cases rather than to evening hours as such.)

The Public Defender's Office has argued that segregating narcotics cases encourages "tunnel vision" and does not allow judges to evaluate narcotics cases in the context of other crimes. Moreover, segregation can lead to "canned" (routinely packaged) offers and can work against individual attention to cases.

The innocent are dissuaded from pursuing their rights, say the critics, and induced to plead guilty because the sentences typically are light, involving only probation. Convicted offenders, it is argued, seldom receive drug treatment while on probation. Consequently, they are often brought back on probation violations to face prison sentences.

Below, all these issues are considered separately.

The private defenders issue. Public defenders told the research staff that, because private attorneys do not like to appear at night, more defendants have been represented by public defenders since the drug night courts opened. In addition, they say, the creation of night court has resulted in fewer motions being filed and fewer trials being held in narcotics cases.

The assertion that drug night courts jeopardize the due process rights of defendants is strongly disputed by judges and staff of the State Attorney's Office. In Judge Fitzgerald's

words, "Without due process, everything else is meaningless. I believe drug night courts give defendants their due process rights. If I thought otherwise, I'd shut the program down tomorrow. That's how strongly I feel about it."

The research data confirm suspicions that the number of narcotics defendants represented by private attorneys dropped by 10 percentage points after the night courts began. (The national survey also found that private attorneys in another city

at night, nearly half of all night court staff surveyed (judges, attorneys, probation officers, and clerks) mentioned the speedy pace as a problem. Fifty-seven percent of the staff in the night courts felt that caseload pressures interfered with their ability to do their job well. Moreover, 6 out of 10 persons surveyed cited fatigue as a problem, making it the most frequently mentioned staff problem.

The research established that case dispositions *did* change with the opening of the drug night courts.

Sentencing patterns may have changed . . . because the police began making arrests for those caught with smaller amounts of drugs than in the past.

would be reluctant to attend night court.)

Cook County yielded no solid evidence, however, that failures to appear by public or private attorneys changed because of the drug night courts. Similarly, no change in attendance rates was observed for defendants. Although research results do suggest that there have been changes in the processing and outcomes of narcotics cases since night court was established, it appears to be a judgment call as to whether these changes, on balance, have harmed the interests of defendants. The most important point to consider in this finding is that the changes are the result of segregating narcotics cases and emphasizing productivity; they are unrelated to the fact that court operations occur after dark.

The fatigue and security issues. Observation in the night courts indicates that the case processing pace is indeed rapid. When asked about problems encountered with working

The plea rate for narcotics cases increased significantly, while dismissal and trial rates fell proportionately. (The significant decline in the rate of trials was in bench, rather than jury, trials.)

Simply finding staff to work evening hours can be a challenge. Nationally, the survey of nighttime court operations revealed that a night jury operation in Brooklyn, New York, failed in large measure because court administrators could not come to an agreement with the labor union at the Legal Aid Society; thus the union refused to allow its members to work at night. Cook County has used innovative ways to staff its drug night courts, from requesting volunteers to offering incentives, to making a stint in night court part of regular staff rotation.

By and large, these efforts have been quite successful in recruiting and maintaining night court staff. There still are special problems that staff encounter when working at night that may affect morale and effi-

ciency. The staff survey disclosed that the main problem in working nights is fatigue—mentioned by 60 percent of the respondents overall and by 83 percent of judges working at night. Individual responses indicate that fatigue complaints arise from a combination of the work hours and the rapid pace of the drug night courts.

Another commonly mentioned concern of night court staff (reported by 55 percent) is security, both within the building and when traveling to and from work. Other common problems include less time with families (52 percent), lack of time and facilities for breaks (48 percent), the fast pace (47 percent), and isolation from daytime colleagues and staff meeting times (35 percent).

This is not to say that there are not some perceived benefits from working in drug night court. The most commonly mentioned are increased autonomy and lack of interruptions (together reported by 58 percent of staff). Still, even though most night staff are volunteers, 70 percent stated that they would prefer to work days. Recruiting staff and sustaining morale and efficiency clearly are important challenges to any jurisdiction considering nighttime operations.

The leniency issue. No changes were observed in the rate at which suppression and other motions were

offenders sentenced to probation rose from 45 percent to 67 percent, while periods of probation decreased significantly. (No changes were observed in dispositions and sentences of other felony cases.)

Of course, sentencing patterns may have changed for reasons other than segregating cases in night court. Judge Fitzgerald and Deputy State Attorney Al Tomasco believe that sentences became more lenient because the police began making arrests for those caught with smaller amounts of drugs than in the past. They feel this contributed to more lenient sentences.

The willingness of the prosecutor to plea bargain on drug cases may have been a factor as well. Ultimately, whether the change in sentence disposition appears troubling depends on what one thinks is the appropriate sentence for drug offenders. If one believes probation is the best response in many cases, the increased use of probation by the drug night courts can be viewed as a positive move away from the unduly harsh sentences of the past. On the other hand, if one believes heavy reliance on probation is inappropriate for many drug offenders, the increased use of probation will be viewed as negative and “giving away the courthouse.”

The treatment issue. No lesser emphasis on drug treatment for narcot-

before and after the drug night courts opened. However, there are a number of reasons for the very limited use of treatment.

First, drug treatment for defendants is said to be rarely ordered because defendants placed on probation have little incentive to volunteer for treatment. Unless they want treatment, they will not be accepted by TASC.<sup>†</sup>

Second, TASC will not accept offenders charged with drug sales and, according to Judge Fitzgerald, there are few simple possession cases in Cook County. These two reasons help explain why most defendants are routinely placed on probation without a treatment condition.

## Conclusion

**I**n light of the findings, making existing courtrooms serve double duty by adding late afternoon or early evening shifts to adjudicate narcotics cases is a viable and less costly alternative to constructing new buildings and hiring additional personnel. Prior to developing a plan to implement the drug night court concept, court leaders should evaluate issues concerning practicality, efficiency, and quality of justice, among others. The success of court leaders in Cook County, Illinois, shows that drug night courts are a realistic, efficient, and cost-effective approach available right now for replication in other jurisdictions to manage the increasing volume of drug-related cases.

For court officials and others interested in the operation of the drug night courts, especially those established by the Circuit Court of Cook County, Illinois, BJA is publishing a

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filed as a result of the drug night courts. But increased leniency did appear to be a factor in narcotics cases once the drug night courts opened: The percentage of convicted

ics offenders was found after the drug night courts were established. But that is cold comfort inasmuch as just 4 percent of convicted offenders were sentenced to treatment both

<sup>†</sup> TASC (Treatment Alternatives to Street Crime) is a program started in 1972 and sponsored primarily by the Bureau of Justice Assistance. The program attempts to reduce criminality by using pressures available through the criminal justice system to motivate drug-dependent offenders to undergo treatment for substance abuse.



new monograph, *Assessment of the Feasibility of Drug Night Courts* (NCJ 142415). In it, the researchers describe Cook County's drug night courts in more detail. Results of interviews with Cook County officials are presented that focus on night staffing issues and discuss analyses of data collected from case records. These analyses shed light on the questions of efficiency and quality of justice in the drug night courts. Subsequent sections include results of a survey conducted with staff: judges, prosecutors, public defenders, probation officers, and court clerks.

A second monograph, *Drug Night Courts: The Cook County Experience* (NCJ 147815), will assist court

officials in developing a strategy for the implementation, operation, and management of a night drug court, including policies, procedures, and training techniques to support the operation.

For more information on the availability of these BJA publications, readers may call the BJA Clearinghouse, toll free, at 1-800-688-4252 or contact:

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As part of our ongoing effort to disseminate up-to-date information to the criminal justice field, the Bureau of Justice Assistance (BJA) releases this, the inaugural issue of our Bulletin series. The purpose of the Bulletin is to identify new and emerging issues and to highlight innovative and progressive ideas and approaches useful to the criminal justice system. Many of the topics discussed in the bulletins will be covered later in greater detail in our Program Briefs, Monographs, Fact Sheets, Implementation Manuals, and other publications.

Publication and dissemination of information about innovative practices and other information useful to criminal justice practitioners and policymakers are important facets of BJA's mission, as mandated by the Omnibus Crime Control and Safe Streets Act of 1968, as amended. It is important that those charged with responsibility for ensuring the safety of our streets and

neighborhoods be provided the means for making wise, informed decisions. Our experience working with State and local law enforcement has taught us that this capability is improved when State and local decisionmakers are provided the opportunity to choose from the broadest possible array of crime control strategies, tailoring their approaches to their local situation and environment. BJA, therefore, is pleased to launch this new series and will strive to keep criminal justice practitioners apprised of new developments, techniques, and approaches on a regular basis.

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